COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Joint Investigation by the Department of Public Utilities and the Department of Telecommunications and Cable on their own motion instituting a rulemaking pursuant to G.L. c. 30A, § 2, 220 CMR 2.00, and 2.07 CMR 2.00, to amend 220 CMR 45.00: Pole Attachment, Duct, Conduit, and Right-of-Way Complaint and Enforcement Procedures.	D.P.U. 26-10 D.T.C. 26-1
Joint Notice of Inquiry by the Department of Public Utilities and the Department of Telecommunications and Cable on their own Motion to explore utility pole attachment, conduit access, double pole, and related considerations applicable to utility work conducted on public rights-of-way in the Commonwealth.	D.P.U. 25-10 D.T.C. 25-1

GONETSPEED'S REPLY COMMENTS

June 11, 2026

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GONETSPEED'S REPLY COMMENTS

CRC Communications, LLC, d/b/a GoNetspeed, appreciates the opportunity to participate in this important proceeding.

I. Introduction

The initial comments reflect a stark divide between those seeking to improve the health, well-being, and economic conditions of the Commonwealth through robust broadband expansion and deployment, and those seeking to maintain the status quo, or, worse, take steps backward.

The commenters universally recognize and appreciate the Departments' efforts in this inquiry and rulemaking. But those whose interests federal and state pole attachment law is designed primarily to protect and advance — broadband and wireless communications providers — point out the undeniable fact that the proposed regulations do not go far enough to advance the goals of facilitating broadband access and enhancing competition. All attacher commenters agree that the proposed rules need work to ensure they meet the Healey-Driscoll Administration's broadband goals, and, in addition to proposing its own revisions, GoNetspeed supports the thoughtful changes proposed by NECTA, Zayo and others. To this end, GoNetspeed has updated its proposed revisions to the Proposed Rules to better align its requests with those of other attachers, particularly NECTA.[1] If implemented as the Departments propose, the regulations will leave Massachusetts "a significant outlier,"[2] far behind the vast majority of states, and every nearby state, in its ability to develop and deploy modern broadband networks.

On the other hand, those upon whom the law imposes duties to force them to act are uniform in seeking to make the rules more complicated, intricate, and entangled in bureaucracy,

[1] *See* Appendix A.2 ("GoNetspeed's Revisions").

[2] Remarks of Tim Wilkerson of the New England Connectivity and Telecommunications Association ("NECTA"), Transcript of May 27, 2026 Public Hearing ("Tr.") at 54:11.

and involving much longer deployment timeframes, than the majority of states and, again, every nearby state. To ensure that "Massachusetts means business," the final rules should take effect promptly and apply to applications pending at the time of adoption. Any other approach would unnecessarily delay broadband deployment and unfairly disadvantage providers that have already waited years for relief from unacceptably long access timelines.

II. The Initial Comments Confirm that the Proposed Rules Require Revision to Advance the Commonwealth's Broadband Objectives and Comply with Governing Law

"[D]elays that exceed several months routinely have a prohibitive effect by increasing the costs of the deployments and generating uncertainty that requires providers to cancel, postpone, or scale back their investments in certain projects."[3] The Federal Communications Commission ("FCC") reiterated this truism just last week in a proceeding initiated to eliminate barriers to wireline deployments. More than 15 years ago, a differently composed FCC recognized the same detrimental impact of delay and identified a game-changing solution: adopting timelines governing the pole-attachment process "from the day that a prospective attacher files an application, to the issuance of a permit indicating that all make-ready work has been completed."[4] Massachusetts is now on the cusp of enacting reforms that could finally allow broadband deployment to move beyond the current snail's pace that has deterred investment. As the initial comments reflect, however, additional changes are needed to ensure the rules meaningfully accelerate deployment rather than simply codify the status quo.

[3] *Build America: Eliminating Barriers to Wireline Deployments*, Draft Notice of Proposed Rulemaking, WC Docket 25-253 at 10, ¶ 17 (circulated June 4, 2026) (DOC 422166).

[4] *See* Connecting American The National Broadband Plan at 111-112.

A. Federal and State Pole Attachment Laws are Intended to Facilitate Deployment and Competition, Not Protect Entrenched Monopoly Interests

Utility pole regulation has always been about a simple economic reality: communications providers generally have no practical alternative but to attach their facilities to poles controlled by monopoly utilities. As the Departments recognized in the Order Opening this Rulemaking, the ownership and control of poles are "largely governed by monopoly utilities," leaving competitive telecommunications, broadband, and cable providers with no feasible option for network deployment other than access to existing poles.[5] For that reason, Congress authorized the FCC — and states such as Massachusetts that have certified jurisdiction—to ensure that pole attachments are provided on just and reasonable rates, terms, and conditions and on a non-discriminatory basis.

As Commissioner Rubin recognized, "the humble utility pole is deceptively complex."[6] Thus, the core principle stated above is sometimes lost in the technical debates that dominate pole attachment proceedings — application sizes, make-ready timelines, survey procedures, and remedies for missed deadlines. But those details exist to serve a broader purpose: preventing monopoly control of essential infrastructure from becoming a barrier to competitive communications networks.

Courts, legislators, and regulators have long recognized that communications providers require access to utility poles to construct and expand their networks.[7] Congress first addressed

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[5] *See Joint Investigation by the Department of Public Utilities and the Department of Telecommunications and Cable on their own motion instituting a rulemaking pursuant to G.L. c. 30A, § 2, 220 CMR 2.00, and 207 CMR 2.00, to amend 220 CMR 45.00: Pole Attachment, Duct, Conduit, and Right-of-Way Complaint and Enforcement Procedures* ("*Joint Rulemaking Order*"), Order Instituting Joint Rulemaking and Further Inquiry on Memorandum of Agreement, D.P.U. 26-10, D.T.C. 26-1, at 10 (Mass. Dep't of Pub. Utils. & Dep't of Telecomms. & Cable, Mar. 6, 2026), at 8.

[6] Tr. 11:19-20.

[7] *See Nat'l Cable & Telecomms. Ass'n v. Gulf Power Co.*, 534 U.S. 327 (2002) (recognizing poles as essential to communications network deployment) ("NCTA"); *see also Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240, 5377-78 (FCC April 7, 2011) (FCC 11-50) ("Utility poles are essential to providing

this issue in 1978 by enacting the Section 224 of the Communications Act,[8] directing the FCC to regulate cable television attachments to utility poles in states that had not certified that they would effectively regulate pole attachment rates, terms, and conditions themselves. That same year, Massachusetts adopted G.L. c. 166, § 25A ("Section 25A"), directing the then-Department of Public Utilities, among other things, to determine and enforce reasonable rates, terms and conditions of pole access where utilities and attachers could not agree.

Over time, the Commonwealth implemented these protections. In 1984, the Department established procedures allowing cable operators to challenge unreasonable pole attachment terms and charges through complaint proceedings.[9] In 2000, following enactment of the federal Telecommunications Act of 1996 – which extended pole attachment rights to competitive telecommunications providers and established a mandatory right of pole access – the Department of Telecommunications and Energy implemented these federal changes by adopting rules to "regulate matters of discriminatory access" to utility poles, conduit and rights of way.[10] The Department explained that these rules were necessary to expand the availability of innovative telecommunications services and to prevent "artificial barriers" that could restrict competition and

broadband service, wired and wireless, because that's where communications companies string cables and, increasingly, place wireless antennas.") ("*FCC 2011 Order*").

[8] 47 U.S.C. § 224 ("Section 224")

[9] *See Petition of New England Cable Television Association, Inc. requesting adoption of regulations in order to provide CATV services, the CATV operators install wires, cables and other equipment upon poles, and in communications ducts and conduits owned or controlled by utilities*, Order, D.P.U. 930, at 12 (July 18, 1984).

[10] *See Order Establishing Complaint and Enforcement Procedures to Ensure That Telecommunications Carriers and Cable System Operators Have Non-Discriminatory Access to Utility Poles, Ducts, Conduits, and Rights-Of-Way and to Enhance Consumer Access to Telecommunications Services*, D.T.E. 98-36-A, 2000 Mass. PUC LEXIS 21, at *8-9 (July 24, 2000).

consumer access to communications services to the detriment of the Commonwealth's economy, recognizing:[11]

> Sovereign choice by commercial and residential consumers can be realized only if consumers are accorded unfettered access to the contenders for their telecommunications business. An array of products and services is of little value to a consumer if providers cannot reach the consumer in his place of business or in his home. Innovative, efficient providers cannot reap the benefits of their foresight and efficiency without genuine access to the homes, offices, stores, and factories of their intended customers.[12]

The Department observed that, just as the Massachusetts electric restructuring statute would not tolerate obstructing a consumer's choice of competitive electric supply, tolerating artificial barriers to telecommunications competition would restrict "consumer access to the telecommunications marketplace of information and ideas" — something "even more fundamental."[13] The Department stated definitively: "Only by ensuring nondiscriminatory access by telecommunications competitors to the poles, ducts, conduits and rights-of-way through which consumers receive telecommunications services can the benefits of the 1996 Telecommunications Act be realized."[14]

Following federal and state efforts to spur telecommunications competition, as broadband services became central to economic and social life, the FCC undertook additional reforms to accelerate deployment. In 2011, it established timelines, enforced through self-help remedies, to require pole owners to provide timely access to utility poles.[15] In 2018, the FCC adopted further reforms allowing attachers to employ contractors to perform surveys and make-ready for certain

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[11] *Id.* at *2-3.

[12] *Id.* at *3.

[13] *Id*. at *3 n.2.

[14] *Id*. at *3.

[15] *See FCC 2011 Order*.

categories of work in the communications space in an accelerated, consolidated "one touch" process, and for make-ready work in the power supply space when utilities do not meet required timelines.[16] Since then, the FCC has continued refining its rules to address persistent barriers to deployment created by pole owners.[17]

Massachusetts considered updating its own pole attachment framework in 2019-21 but ultimately did not adopt any reforms.[18] In the meantime, neighboring states that have certified jurisdiction over pole attachments have adopted frameworks that closely resemble versions of the FCC's timelines and self-help remedies.[19] As a result, those states now offer a more predictable and hospitable regulatory environment for broadband investment while Massachusetts continues to operate under rules that predate the modern deployment framework fostered by the FCC and numerous states.

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[16] *See In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, 33 FCC Rcd. 7705, (Aug. 3, 2018) (FCC 18-111) ("*FCC 2018 Order*").

[17] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 36 FCC Rcd. 776 (Jan. 19, 2021), https://www.fcc.gov/ecfs/document/0119902707730/1; *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, 38 FCC Rcd. 12379 (FCC Dec. 15, 2023), https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf; *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* ("FCC 2025 Order"), WC Docket No. 17-84, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration, FCC 25-38, 2025 WL 2144600 (FCC July 25, 2025), https://docs.fcc.gov/public/attachments/FCC-25-38A1.pdf.

[18] *See Joint Investigation by the Dep't of Pub. Utilities & the Dep't of Telecommunications & Cable, on Their Own Motions, Instituting A Rulemaking Pursuant to Exec. Ord. No. 562 to Reduce Unnecessary Regulatory. Burden*, *G.L. C. 30A, § 2, 220 CMR 2.00, & 207 CMR 2.00, to Amend 220 CMR 45.00*, DTC 19-4-A, DPU 19-76-A, 2021 WL 5865483 (Dec. 7, 2021) ("Joint Rulemaking Order").

[19] *See* GoNetspeed Exhibit 1, which modifies Exhibit 1 from GoNetspeed's Initial Comments by adding an additional topic, a citation to the California ROW rules confidentiality provisions, and a reference to W.VA. as a nearby certified state that allows work above the communications space.

The Commonwealth's failure to keep pace with developments in pole attachment law and practice throughout most of the country has had detrimental consequences that are not theoretical or imagined, but are very real. Pete Saladino of Open Cape cited a May 2025 Fiber Broadband Association study of fiber-to·the-home penetration by state showing that "Massachusetts ranks 47th amongst U.S. states in progress from 2013 through 2024."[20] GoNetspeed's Jamie Hoare stated:

> In the past four years GoNetSpeed has invested almost six times as much in Maine as in Massachusetts to build networks, almost seven times as much in Connecticut.· We have spent almost as much building in rural Alabama as we have in Massachusetts. This wasn't the plan four years ago, but we need a return on our investment. And four-year pole attachment processes are not sufficient when neighboring states get it done in less than a quarter of that time.[21]

Commissioner Charles recognized the importance of updating these rules to effectuate state policy goals.

> As part of the Massachusetts Means Business initiative, this work reflects one of the many ways we are helping to create an environment where companies can grow, invest, and succeed in Massachusetts. . . .
>
> We know that timely and reliable access to pole infrastructure will be essential not only to expanding high-speed broadband deployment . . . , but also to ensuring that the Commonwealth remains competitive in an evolving economic environment. Modernizing these processes and reducing barriers to infrastructure investment will help strengthen existing networks and support long-term economic growth and innovation across Massachusetts.[22]

The present proceeding therefore presents an important opportunity for the Departments to bring Massachusetts' rules in line with the longstanding statutory objective underlying both federal and state pole attachment law: ensuring that access to essential infrastructure is governed by

[20] Tr. 32:10-14.

[21] Tr. 43:1-10.

[22] Tr. 12:19-23, 14:12-21.

nondiscriminatory, just and reasonable terms that facilitate broadband deployment, promote competition, and protect the ability of Massachusetts consumers and businesses to choose among competing providers.

B. The Pole Owners' Legal Responsibilities to Provide Access are No Less Important Than Other Legal Duties with Which They Must Comply

Pole ownership carries with it legal obligations to provide non-discriminatory access upon just and reasonable rates, terms and conditions. These arise under both state law:

> A utility shall provide a wireless provider [*i.e.,* any person, firm or corporation other than a utility, which provides telecommunications service] with nondiscriminatory access to any pole or right-of-way used or useful, in whole or in part, owned or controlled by it for the purpose of installing a wireless attachment.[23]

and federal law:

> A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.[24]

The obligation to provide nondiscriminatory, just and reasonable access to poles is no less an obligation than any other legal obligation. It has the same importance and priority as "providing . . . reliable service to customers" and other "public service obligations in terms of providing safe, reliable … service to customers" cited by the EDCs in their filings.[25]

It is the responsibility of pole owners to comply with ***all*** legal obligations to which they are subject. Pole owners may not pick and choose the laws they will obey. It is not their job — nor do they have authority — to decide that one set of legal obligations is paramount to the other.

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[23] G.L. c. 166, § 25A.

[24] 47 U.S.C. § 224(f)(1).

[25] *See* EDC Initial Comments, D.P.U. 26-10, D.T.C. 26-1, (filed May 12, 2026) ("EDC Initial Comments") at 3 (alteration in original) (quoting Massachusetts Electric Company, d/b/a National Grid, D.P.U. 18-50, at 53, 122 (2019)). Essentially identical language appears in National Grid's Initial Comments in the investigation phase (D.P.U. 25-10 / D.T.C. 25-1) (March 18, 2025) at 21 and Eversource's Initial Comments in that phase (March 18, 2025) at 23.

Pole owners may not elect to ignore obligations they dislike or legal mandates with which they disagree. They may not favor obligations they are used to and resist new obligations with which they are unfamiliar (although, all four of the pole owners in this proceeding operate in other states under rules being considered here).

It is up to the pole owners' management to figure out how to obey the law. They may need to adopt new ways of doing things (although, again, they already operate in multiple states under the same rules being considered in this proceeding). They will need to marshal the personnel and other resources necessary to get the job done.

C. The Regulations Should Apply Promptly and To Pending Applications

The EDCs and Verizon requests to postpone their legal obligations by extending the effective date by 180 days and the reporting requirements by a year[26] must therefore be rejected. And, as GoNetspeed explained in its Initial Comments,[27] utilities must fulfill their pole access obligations not only for prospective permit applications, as suggested in the Joint Rulemaking Order,[28] but also for applications that are pending when final rules are adopted. Failing to extend the same timelines and protections to companies that submitted attachment applications before the rules were adopted—sometimes years earlier—would fail to satisfy the mandate of non-discriminatory access.

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[26] *See* Verizon Initial Comments at 3; EDC Initial Comments at 7-8. 24.

[27] *See* GoNetspeed Initial Comments, D.P.U. 26-10, D.T.C. 26-1, (filed May 12, 2026) ("GoNetspeed Initial Comments") at 34; *see also* GoNetspeed Revisions at 220 CMR 45.01; *see also* WiredWest Initial Comments, D.P.U. 26-10, D.T.C. 26-1, (filed May 12, 2026) at 7 ("It is unclear how the Departments intend for 220 CMR 45.02 through 45.12 to apply to existing pole attachment agreements, some of which are long-term; or to applications in process.")

[28] *See* Joint Rulemaking Order at 21 (stating that rules 45.06 to 45.12 and 45.16 would only apply to applications submitted after the effective date of the rules).

D. The Pervasive "Can't Do!" Attitude of the Pole Owners is Unacceptable

GoNetspeed has previously pointed out the "Can't do!" — or, perhaps, "Won't do!" — attitude the pole owners demonstrated during the inquiry phase.[29]

Unfortunately, that attitude persists in this phase as well. The EDCs' Initial Comments contain at least the following examples:

- The EDCs can't do system upgrades in time for the rules to be effective in 90 days. Pp. 7-8.

- The EDCs say they **will not meet timelines** unless the number of poles in small or regular orders is reduced because doing so would be "challenging." Pp. 12-13.

- The EDCs seek to **eliminate any timeline for jobs over 3,000 poles**, claiming processing larger jobs "strains" resources and citing early-adopter regulations that preceded the FCC's adoption of a timeline for large jobs. P. 16.

- The EDCs request a 120 day application aggregation period – quadruple that of the FCC - because they claim they don't have the resources for a 60-day period – which already unacceptably lengthens the access process. Pp. 13-14.

- The EDCs claim to need 120 days advance notice of large jobs, double the FCC's 60 day notice period. Pp. 14-15. The pole owners do not explain why they need four months' notice before an application even comes in. Presumably this is a claimed resource issue but tellingly the EDCs expect attachers to complete their work within 30 days "for clarity and to avoid litigation,"[30] and to maintain sufficient resource to move, transfer or relocate their facilities to support the pole owner's own "planned and emergent work."[31]

- The EDCs, claiming insufficient resources, would deem an applicant's questioning of a make-ready estimate to be a rejection of that estimate, forcing the attacher to refile its application. Pp. 15-16.

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[29] *See Joint Notice of Inquiry by the Department of Public Utilities and the Department of Telecommunications and Cable on Their Own Motion to Explore Utility Pole Attachment, Conduit Access, Double Pole, and Related Considerations Applicable to Utility Work Conducted on Public Rights-of-Way in the Commonwealth*, D.P.U. 25-10, D.T.C. 25-1, GoNetspeed's Reply Comments at 5, 11 (Mass. Dep't of Pub. Utils. & Dep't of Telecomms. & Cable Aug. 8, 2025).

[30] EDC Initial Comments at 10.

[31] See Exhibit 2 (Eversource Pole Attachment Agreement at § 7.1.4.)

- Developing a joint EDC-ILEC attachment application is just too much work. Pp. 17-18.

- Unitil does not currently report violations through NJUNS and expects that changing this practice may entail implementation requirements and costs that it has not yet been able to evaluate. Pp. 18-19.

- Unitil needs double the time provided in Proposed Rules to provide copies of inspection reports. P. 19.

- EDCs say it is "too challenging to fully track all the work performed during the pole attachment process because of its stop-and-go nature do [sic] events and actions beyond the control of the EDCs." P. 24

- EDCs can't be expected to transfer communications facilities – too risky. P. 11. In fact, EDC pole attachment agreements typically assert their right to move or transfer attacher facilities in emergencies, and even "as necessary to maintain its own infrastructure."[32]

- EDCs say they need 180 days to comply with the new rules, once effective, and a year to comply with the reporting requirements. Pp. 7-8, 24.

The Advanced Communications Law & Policy Institute (ACLP) at New York Law School is a respected institution and, more importantly, a disinterested observer of these proceedings. It points out that this reaction by the pole owners is entirely predictable.

> Electric customers . . . remain at the mercy of their utilities and their ever-higher rates. Things move much more slowly in this space, especially in Massachusetts, whose utility sector lags those in many other states vis-à-vis diversifying its energy portfolio and embracing smart meters.
>
> In practice, the Departments' proposed pole rules substantially defer to the slower, less innovative, and uncompetitive utility sector. This is evident in the significant differences between the timelines included in the Departments' proposed rules, those evident in nearby reverse-preemption states, and those developed by the FCC which are applicable in 27 states, including neighboring Rhode Island . . . .[33]

[32] *See* Exhibit 2, Eversource Pole Attachment Agreement at § 7.1.8 ("Licensor retains the right to temporarily move or transfer Licensee's Facilities as necessary to maintain its own infrastructure."); Exhibit 3, National Grid Aerial License Agreement at § 16.3 ("When Licensor deems it an immediate threat to safety and/or an emergency exists, it may rearrange, transfer, or remove Licensee's Facilitiy(ies) to Licensor poles at Licensee's expense.")

[33] ACLP Initial Comments, D.P.U. 26-10, D.T.C. 26-1, (filed May 12, 2026) ("ACLP Initial Comments") at 6.

This being the case, it is imperative that the Departments develop rules, including deadlines and enforcement measures, to ensure that pole owners comply with the requirements.

III. The Deployment vs. Safety Dichotomy Is False

The EDCs correctly point out that there exist many important safety rules that must be observed in the construction, operation, and maintenance of utility pole plant.[34] GoNetspeed shares — if not exceeds — the EDCs' interest in ensuring that its network is constructed and maintained in full compliance with applicable safety standards and in a manner that preserves electric service reliability. GoNetspeed's facilities not only depend on the electric service provided by the EDCs, but safe and structurally sound construction is also essential to protecting GoNetspeed's fiber infrastructure and the workers who build and maintain it. Just as importantly, GoNetspeed is committed to ensuring that its customers can rely on its network to deliver the essential communications services on which they depend (and for which those subscribers pay) — which facilitate, among other things, telehealth, telework, remote learning, and access to critical emergency information.[35] GoNetspeed's customers' interests in reliable, affordable communications service merit the same consideration as those of electric service customers.[36] Moreover, GoNetspeed contractually indemnifies the pole owner against the remote possibility of problems caused by its attachments, further aligning GoNetspeed's incentives with the EDCs' interest in ensuring that all work is performed safely and in compliance with applicable standards.[37]

[34] EDC Initial Comments at 2.

[35] *See* Tr. 39:6 – 40:2 (remarks of Jamie Hoare).

[36] G.L. c. 166, § 25A.

[37] Exhibit 3, National Grid Aerial License Agreement; Eversource; Verizon.

Where the EDCs are flat-out wrong, if not disingenuous, is their claim that state law prevents them from delegating certain work on their electrical facilities, thereby foreclosing work by any other entity. The authorities they cite do not establish any such categorical prohibition.

The EDCs assert that they may not "delegate their responsibility" for the "safety and reliability of the electric system" citing a DPU 1995 decision.[38] In fact, the cited decision states, "It is well established that the Company may not delegate its responsibility for ***providing service at the lowest possible cost***."[39] Moreover, delegating the performance of certain work is not the same as delegating ultimate responsibility. Indeed, the Massachusetts Supreme Judicial Court has expressly clarified that while the duty itself cannot be delegated, "its performance may be."[40]

The EDCs' own conduct confirms this principle. The utilities routinely rely on contractors to perform work on their electrical facilities, including work affecting the power supply space. National Grid's 2022 pole attachment agreement with GoNetspeed states that National Grid may delegate survey and engineering work to a contractor (§ 3.3) and GoNetspeed could, with permission from National Grid, be allowed to supervise contractors in the performance of National Grid's make-ready work.[41] Section 3.8 of the agreement states: "In the event the Licensor assigns Make-Ready Work responsibility to the Licensee, the Licensee shall utilize Qualified Communication or Electrical Workers acceptable to Licensor from the Licensor's preferred contractor list provided to the Licensee by the Licensor."[42] These provisions make clear that National Grid itself recognizes that the performance of certain work affecting its electrical facilities

[38] EDC Initial Comments at 3, citing *Commonwealth Electric Company*, Order, D.P.U. 92-3C-IA, at 6 [sic] (February 9, 1995).

[39] *Commonwealth Electric Company*, Order, D.P.U. 92-3C-IA, at 3 (February 9, 1995) (emphasis added).

[40] *See Commonwealth Elec. Co. v. DPU*, 397 Mass. 361, n.4 (Apr. 22, 1986).

[41] *See* Exhibit 3.

[42] *Id.*

— including work in the power supply space — can be delegated to qualified contractors subject to appropriate utility oversight.

The authorities cited by the EDCs do not suggest otherwise. In *Boston Edison Company*, the EDC itself had hired the contractor, and the Department's finding rested not only on imputation of the contractor's conduct but also on the EDC's own failures.[43] At most, that decision confirms that an EDC remains responsible for its own unreasonable conduct; it does not hold that an EDC is automatically liable whenever a third party performs work that later contributes to a reliability issue. Finally, *Massachusetts Electric Company, d/b/a National Grid* merely states in broad, general terms that an EDC must ensure the reliability, maintenance, and safety of the distribution system.[44] The decision says nothing about the more specific issues in this rulemaking, such as work in the power supply space, the use of contractors in that space, or whether a third-party may supervise the contractor so long as the utility retains sufficient oversight to uphold its duties. Taken together, these cases show only that EDCs retain ultimate responsibility for their statutory obligations — not that state law prohibits attachers from supervising qualified contractors performing work in the power supply space.

Nor do the EDCs acknowledge that the proposed rules — particularly as revised by GoNetspeed — ensure that pole attachments and make-ready work are safe and reliable and comply with applicable rules and standards, just like the owners claim their own attachments do. The Proposed Rules as revised by GoNetspeed, like the FCC rules proposed for adoption by numerous commenters in this proceeding, contain numerous provisions that provide pole owners

[43] *See Boston Edison Company*, Order, D.P.U. 87-1A-A, at 52–57 (April 30, 1987)("The Department finds that it need not rely on the imputed actions of [the contractor] because [the EDC] itself failed to take reasonable actions which could have substantially reduced the outage time which resulted from the fan motor failure.")

[44] *See Massachusetts Electric Company, d/b/a National Grid*, D.P.U. 18-150 (September 30, 2019).

visibility into, oversight of, and the ability to ensure safety throughout, the attachment process, under conventional make-ready and under regulatory self-help and OTMR. These include:

Conventional Make-Ready

Utility reviews make-ready applications for completeness:

GNS[45] § 45.08(2)(d)(1) FCC[46] § 1.1411(c)(1)

Utility conducts survey and reviews application on the merits:

GNS § 45.08(2)(f)(1) FCC § 1.1411(c)(2)-(3)

Attacher may request cyclical inspection reports to double check survey results which helps to identify preexisting non-compliant conditions that the utility has not yet remedied [note that FCC requires utilities to save inspection reports until a superseding report is conducted]:

GNS § 45.08(3)(b) FCC § 1.1411(d)(4)

Utility promptly corrects preexisting noncompliant conditions that pose threat of imminent harm:

GNS § 45.08(f)(2)(1) FCC § 1.1411(i)(2)

Utility provides an estimate – detailed and includes documentation of all charges [therefore, specifying in detail the work that must be done]:

GNS § 45.08(3)(a) FCC § 1.1411(e)

Utility sends notice to all attachers specifying where and what make-ready will be performed, and deadline for completion, thereby expanding scope of reviewing entities [note that GoNetspeed's Revisions to proposed rules retain notice to impacted government authorities, unlike the FCC rules, which do not require such notice]:

GNS § 45.08(5) FCC § 1.1411(f)

Utilities and attachers may deviate from timelines temporarily where safety so requires:

GNS § 45.10 FCC § 1.1411(i)

Attacher required to affix ID tags [facilitating future work and/or identification of attachers]:

GNS § 45.04(4)

[45] "GNS" refer to 220 C.M.R. sections included in GoNetspeed's Revisions attached hereto as Appendix A.2.

[46] FCC refers to 47 C.F.R. sections in which the FCC's pole attachment rules are codified.

Regulatory Self-Help

When utility fails to meet survey response deadline, new attacher may conduct the survey using utility approved contractor. Utility must be notified of any field inspection and may be present:

GNS § 45.08(6)(a) FCC § 1.1411(j)(1)

Work performed by attacher is done using an approved contractor. Utility and existing attachers must be notified and may be present for make-ready work:

GNS § 45.08(6)(a)-(b) FCC § 1.1411

Where a contractor identifies a need to adjust make-ready work to address field conditions, the utility retains ability to approve adjustment or not:

GNS § 45.08(6)(b)(5) FCC § 1.1411(j)(3)(i)

The new attacher must immediately notify the utility and existing attachers of any damage; must perform repairs as directed or must pay for repairs performed by the utility or existing attacher:

GNS § 45.08(6)(b)(5) FCC § 1.1411(j)(3)(iii)

The new attacher notifies utility and existing attacher of completion. Utility or existing attacher may conduct a post-completion inspection. Upon notice, new attacher must repair or correct any nonconformity, or the utility or existing attachers may do so and bill the new attacher.:

GNS § 45.08(6)(b)(6) FCC § 1.1411(j)(3)(iii)

Contractors for Self-Help or OTMR

Utility shall maintain a list of approved contractors; generally, a licensee must use a contractor on the list if available:

GNS § 45.11(1)-(2) FCC § 1.1412(a)-(b)

Extensive list of minimum contractor qualification requirements. E.g., agreement to follow safety standards and relevant laws and regulations; knowledge of how to read and follow engineering plans; adequately insured or bonded:

GNS § 45.11(4) FCC § 1.1412(c)

One-Touch Make-Ready (OTMR)

Utility receives and reviews OTMR application for completeness:

GNS § 45.09(2)(e) FCC § 1.1411(k)(1)

Utility reviews OTMR application on the merits. Utility also may object to the characterization of the work as "simple make-ready:"

GNS § 45.09(2)(f)-(g) FCC § 1.1411(k)(2)-(3)

New attacher notifies utility and other attaching entities of any field inspection as part of the OTMR survey and permit them to be present:

GNS § 45.09(2)(f)(2) FCC § 1.1411(k)(3)(i)

New attacher gives prior written notice of OTMR work to utility, other attachers and permits them to be present:

GNS § 45.09(3)(a) FCC § 1.1411(k)(4)

New attacher must receive necessary permitting and approvals from government authorities:

GNS § 45.09(3)(a) [no equivalent FCC requirement]

New attacher immediately notifies the utility or affected attacher of any damage; utility or other attachers may require licensee to correct, or correct and bill the licensee:

GNS § 45.09(3)(c) FCC § 1.1411(k)(4)(ii)

If utility or new attacher determines during the OTMR work that any part is not simple make-ready, that particular work must be halted. Work then reverts to normal make-ready performed by the utility, and the utility must provide conventional make-ready notice to affected attachers:

GNS § 45.09(3)(d) FCC § 1.1411(k)(4)(iii)

Licensee notifies utility and attachers of OTMR completion; utility and attaching entities may inspect, notify the new attacher of violations, and correct them at new attacher's expense or require new attacher to correct them:

GNS § 45.09(4) FCC § 1.1411(k)(5)

As illustrated above, with GoNetspeed's Revisions, the proposed rules provide more transparency and oversight of contractors performing pole work than exists when — as is common practice in Massachusetts today — an EDC simply hires and supervises its own contractor. That added oversight by all attachers, combined with the use of approved contractors, is why OTMR and self-help are widely used nationwide without compromising safety or reliability.

Those certified states that have opted to allow self-help in the power supply space – when utilities miss the generous timelines afforded them for the performance of survey and make-ready

work — have not experienced the utilities' dire predictions. For example, Vermont, Maine, and California have each recognized the benefits of allowing self-help above the communications space. In revising its rules in 2019, the Vermont PUC explained that the safety and system reliability concerns that originally justified excluding self-help in the power space had been alleviated.[47] Maine likewise amended its rules in 2021 to permit self-help anywhere on the pole because doing so was consistent with the FCC's framework.[48] And California found that allowing a single attacher to perform all make-ready work, including in the power space, creates efficiencies, accelerates broadband deployment, and avoids the potential for delays that may occur under a non-OTMR process.[49] Notably, the EDCs' Initial Comments offer no evidence from these states that allowing self-help in the power space has created safety or reliability problems.

Under the Proposed Rules, as modified by GoNetspeed, the EDCs retain the ability to supervise self-help throughout the attachment process, including in a final post-construction inspection. And, the survey and make-ready processes will continue to provide opportunities for pole owners to identify and correct pre-existing non-compliant conditions, thereby improving overall safety and reliability. Accordingly, nothing in state law prevents the Department from adopting rules that permit qualified contractors to perform this work while leaving the utilities' ultimate responsibility for system safety and reliability fully intact.

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[47] *See Vermont Public Utility Commission, Responsiveness Summary*, Case No. 19-0252-RULE, at 5 (Vt. Pub. Util. Comm'n Nov. 26, 2019).

[48] *See Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Utility Poles; Determination and Allocation of Costs; Procedure, Order Amending Rule and Statement of Factual and Policy Basis*, Docket No. 2020-00281, at 12 (Me. Pub. Utils. Comm'n Apr. 8, 2021).

[49] *See Decision Adopting One-Touch Make-Ready Requirements*, Decision 22-10-025, Investigation No. 17- 06-027, Rulemaking No. 17-06-028, App. A, § IV.C.2.e, at 16 (Cal. Pub. Utils. Comm'n Oct. 20, 2022).

IV. Governmental Authorization Processes Should Not Delay Pole Owner Timelines

Attachers share a common concern that the Proposed Rules would effectively condition access to poles on expansive — and largely unconstrained — local government right-of-way permitting authority. As set forth in GoNetspeed's Initial Comments, at minimum, the pole attachment process must proceed independently of any separate permitting regimes.[50] Those regimes — undefined and not limited in the Proposed Rules — can range from routine street-closing permits to far more complex and sometimes unlawful zoning requirements, and they can take months or even years to resolve. Requiring attachers and pole owners to halt or revise the attachment process based on government permitting decisions would all but guarantee project delays or shutdowns. The beneficial effects of competition would be delayed, or denied by other providers' taking advantage of those delays by adjusting their marketing and targeting the would-be competitor's potential customers first.

Congress anticipated precisely this problem. When it expanded Section 224 in the Telecommunications Act of 1996 to promote competitive telecommunications deployment, it simultaneously limited state and local legal requirements that "prohibit or have the effect of prohibiting" interstate or intrastate telecommunications service in 47 U.S.C. § 253(a), and authorized the FCC to preempt such requirements. The FCC has long recognized that unreasonable permit denials, moratoria, effective moratoria, and prolonged permitting delays can operate as de facto prohibitions on service and are therefore unlawful.[51] Tying commencement of make-ready

[50] *See* GoNetspeed Initial Comments at 12-13.

[51] *See* FCC 2018 Order at ¶¶ 144-160.

work to inevitable municipal permitting delays — an inherently uncertain and often lengthy process — heightens the risk of FCC preemption.

Indeed, under the current structure, a permit hold-up on a single pole could delay make-ready across an entire application. At the same time, Proposed Rule 45.04 already makes clear that no attachment may be installed without consent of government authority. That safeguard, in combination with a reasonably limited good-cause deviation and contractual terms that require attachers to obtain all requisite authority, are sufficient. There is no reason the government permitting and pole attachment processes cannot and should not run in parallel.

At its most egregious, the proposal does not impose on local governments any timeline to act, or any consequence for failure to act or act in timely fashion. No other nearby state gives local governments this much power over the investor-owned utility pole attachment processes. GoNetspeed urges the Departments to revise the Proposed Rules to take into account the attacher commenters' proposed changes to the rules governing permitting and governmental approvals.

V. Other Specific Issues

A. Attachers and Verizon Are Aligned: The Proposed Rules Should More Closely Track the Widely Applicable FCC Rules

Communications companies, which include wired and wireless attachers, including Verizon — also a pole owner — are broadly aligned in recommending that the Department conform the Proposed Rules governing timelines, self-help remedies, OTMR, and overlashing to the framework adopted by the FCC. Doing so would promote clarity, consistency, and efficient broadband deployment while preserving appropriate utility oversight.

First, any review by government authorities should proceed in parallel with the pole attachment process, not as a prerequisite that halts it.[52] The EDCs have no authority and should have no role in administering local permitting requirements. Existing pole attachment agreements already place responsibility for compliance with local laws on the attacher and require the attacher to indemnify the pole owner against claims arising from any violation.

For example, National Grid's pole attachment agreement requires compliance with all applicable "local laws, ordinances, rules, regulations, permits, licenses, and requirements thereunder," obligates the attacher to indemnify the utility for claims alleging violations, and requires notice if the utility's requirements conflict with local law.[53] Similar provisions appear in the Eversource agreement, which likewise places responsibility for obtaining any necessary governmental authorizations squarely on the attacher.[54] These provisions have functioned effectively for years.

If the Departments are concerned that permitting delays could affect construction schedules, the appropriate remedy is a narrowly defined good-cause deviation mechanism—not restructuring the attachment process around government approvals.

Second, Attachers agree that the advance notice periods for mid-size and large jobs (the only job sizes to which the advance notice requirements should apply) should be reduced to align

[52] See NECTA Initial Comments D.P.U. 26-10, D.T.C. 26-1, (filed May 12, 2026) ("NECTA Initial Comments") at 25-27, Zayo Initial Comments D.P.U. 26-10, D.T.C. 26-1, (filed May 12, 2026) ("Zayo Initial Comments") at 4,

[53] *See* Exhibit 3, National Grid Wired Arial License Agreement, §§ 5.1, 12.1, 12.3 and 12.5.

[54] *See* Exhibit 2, Eversource Pole Attachment Agreement, § 6.2 ("Licensee shall be responsible for obtaining from the appropriate public and/or private authority any required authorization to construct, operate and/or maintain Licensee's Facilities on public and private property at the location of Licensor's poles.")

with the FCC's timelines.[55] The EDCs' proposal to extend the notice period for large jobs to 120 days — double the FCC's timeframe — would move in precisely the wrong direction by throttling large, competitive deployments.

While the EDCs cite a decision from the Connecticut Public Utilities Regulatory Authority ("PURA") in support of their proposal, they do not provide the full context of the quote and their reliance is misplaced. The sentence immediately following the language they quote states: "Nevertheless, ***the Authority embraces the attachers' objective to timely access the utility poles***, and indeed, this aligns with the Authority's objective and is a driver of this and prior investigations."[56] Elsewhere in the same order, PURA notes that it had previously *rejected* utilities' requests to add a 30-day advance notice period, finding that requirement "potentially discriminatory and counter to state policy encouraging the expansion of broadband in the state." PURA specifically emphasized that pole owners have a responsibility to expand their resource pool to meet deployment demands. [57] Read in full, the PURA decision supports timely access to poles — not the extended delays the EDCs now propose.

Moreover, regardless of the ultimate timeline adopted, the rules should require pole owners to notify attachers promptly if they know or reasonably should know that they will be unable to meet the applicable deadlines so that attachers can proceed using approved contractors. The FCC's rules contain precisely this safeguard, requiring utilities to notify attachers within 15 days of

[55] NECTA Initial Comments at 20.

[56] *See PURA Investigation of Third-Party Pole Attachment Process*, Order, Docket No. 19-01-52RE01, 23 (May 11, 2022) (emphasis added).

[57] *Id*. at 39.

receiving a complete application if the utility cannot meet the survey deadline,[58] and likewise within 15 days of payment if the make-ready deadline cannot be met.[59] Adopting this rule is critical in Massachusetts, where the EDC pole owners have clearly signaled that they will not meet fixed make-ready timelines for large projects due to their excuses of limited resources and competing demands.[60] Where GoNetspeed has faced large-volume deployment demands, it has successfully worked directly with qualified contractors to ensure the necessary resources are available. In GoNetspeed's experience, contractors can readily scale field operations up or down to meet project demands, as demonstrated by the volume of pole applications submitted and make-ready work completed in nearby states such as Maine, Connecticut, and New Jersey. If a pole owner knows in advance that it will be unable to meet the applicable timelines – because, for example, it is already processing a large order from another attacher – it should permit the new licensee to supervise an approved contractor to perform the work. GoNetspeed has incorporated this requirement based on the FCC's into its proposed rule revisions.[61]

Third, new and existing attachers — including Verizon — agree that the rules should streamline the "meet and confer" requirement to align with the FCC rules.[62] The FCC adopted this requirement only for ***large*** jobs, primarily to address utilities' concerns that they might struggle to meet newly adopted timelines for larger orders due to a limited pool of contractors

[58] *See* 47 C.F.R. § 1.1411(d)(3)(i) ("A utility shall notify a new attacher within 15 days of receipt of a complete application if the utility knows or reasonably should know that it cannot meet the survey deadline.").

[59] *See* 47 C.F.R. § 1.1411(f)(4)("Utilities shall notify a new attacher as soon as practicable but no later than 15 days after receipt of payment specified in paragraph (e)(2) of this section if the utility knows or reasonably should know that it cannot meet the make-ready deadline.").

[60] EDC Initial Comments at pp. 12-13.

[61] *See* Appendix A.2, GoNetspeed Revisions at 45.08(2)(f) and 45.08(5)(h)9.

[62] NECTA Initial Comments at 15-19; Verizon Initial Comments D.P.U. 26-10, D.T.C. 26-1, (filed May 12, 2026) ("Verizon Initial Comments") at 7.

qualified to work in the electric space.[63] Those concerns do not arise in the same way for mid-sized applications, or for third-party communications attachers.

Rules governing the mid-size job category have existed since 2011 in states regulated by the FCC and in certified states throughout the Northeast, where the EDCs and Verizon operate. Accordingly, the EDCs already are well prepared to comply with timelines governing mid-size applications. Nor are such meet and confers necessary for communications attachers. Existing attachers did not request participation in this process in the FCC proceeding, and NECTA's members — which comprise the majority of existing attachers in Massachusetts — have specifically asked that third-party attachers be excluded from meet-and-confer discussions noting competitive concerns.[64] These meetings will necessarily involve sensitive deployment information, including route priorities and buildout schedules. Requiring new attachers to disclose business plans and deployment information to competitors would place unnecessary strain on the critically important confidentiality protections GoNetspeed incorporated into its proposed rule revisions, making those safeguards more difficult and time-consuming to administer and enforce in practice.[65]

GoNetspeed also agrees with NECTA and Verizon that the additional meet and confer in rule 45.08(5) should be eliminated, as it could be viewed by pole owners, competitors or government authorities as an opportunity to delay deployments, particularly given that scheduling this many participants itself will take weeks if not months to coordinate.[66]

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[63] *See* FCC 2025 Order at ¶ 19.

[64] NECTA Initial Comments at 18-20.

[65] *See* Appendix A.2 at 45.04(5) and 45.05(5).

[66] Verizon Initial Comments at 7 ("Verizon proposes to delete language related to "meet and confer" requirements in Section 45.08(5) because "meet and confer" requirements in this context introduce added

Accordingly, as reflected in its rule revisions, GoNetspeed supports eliminating meet-and-confer requirements for mid-sized jobs and limiting the process to a single initial meeting for large applications, rather than requiring repeated conferences throughout the application process.

Fourth, attachers are aligned that the rules should adopt the FCC's 30-day aggregation period, not the 120-day period requested by the EDCs.[67] The EDCs' proposal to extend aggregation to 120 days would materially and needlessly slow the application process by allowing utilities artificially to combine multiple application in a way that pushes projects into larger job categories and effectively sidesteps applicable timelines. With such an extended window, EDCs could easily aggregate enough poles to exceed thresholds and justify extended processing periods.

Nor is compliance with a reasonable aggregation schedule impractical. National Grid's current pole attachment agreement already permits aggregation of up to 15,000 poles within a **30-day** period[68] — far exceeding the FCC's 6,000-pole threshold — demonstrating both that a 30-day aggregation window is entirely workable and that Massachusetts EDCs are used to working within that framework. Despite operating under this contractual provision, the EDCs offers no concrete examples of where a 30-day aggregation period has created operational difficulties.

Fifth, the Department should adopt the FCC's job size categories of 1–299 poles, 300–2,999 poles, and 3,000–6,000 poles (or, if less, .5%, 5% or 10% of the utility's poles in the state). The EDCs' proposal to reduce the "regular" job category to 125 poles and eliminate defined

delay into the process with little or no benefit."); NECTA Initial Comments at 19 (encouraging the Departments to remove the second meet and confer from the Proposed Rules).

[67] *C.f.* NECTA Initial Comments at 7; EDC Initial Comments at 13.

[68] *See* Exhibit 3, National Grid Aerial License Agreement at § 3.2.

timelines for large jobs[69] — subjecting large jobs only to "good faith" negotiations — would represent a significant step backward from the Proposed Rules, and a stark departure from the recently amended FCC rules, which apply in 27 states, and certified state frameworks applied in the Northeast, which use the 300 pole marker for regular jobs,[70] and across the country.

In adopting timelines for large jobs, the FCC expressly rejected a purely negotiated approach, explaining that requiring attachers to negotiate timelines for applications exceeding 3,000 poles would fail to provide the certainty and expedition necessary to meet broadband deployment needs.[71] To address utility workforce concerns, the FCC instead paired these large job timeline with an advance notice and meet-and-confer requirements, providing utilities with planning flexibility while still preserving clear and enforceable deadlines.

Sixth, the comments make clear that the Final Rules should conform the treatment of complex make-ready work and work above the above the communications space to the FCC's framework. The FCC rules include a set of timelines that apply to all survey and make-ready work in the communications space (simple or complex) and a set of timelines that apply to work above the communications space.[72] In contrast, the Proposed Rules distinguish between simple work in the communications space and all other work. Doing so has created confusion among commenters. For example, Verizon appears to assume that self-help does not apply if a utility misses deadlines

[69] EDC Initial Comments at 12.

[70] *See* 65-407 CMR Ch. 880, § 2(A)(7); *PURA Investigation of Developments in the Third Party Pole Attachment Process – Make Ready, Final Decision*, Docket 19-01-52RE01, (May 11, 2022); Vt. Admin. Code 18-1-8:3.708(E). Notably, New York does not distinguish between regular and large jobs because its same timelines apply to all order sizes. *See Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Case 03-M-0432, Order Adopting Policy Statement on Pole Attachments, Appx. A (N.Y. PSC August 6, 2004).

[71] FCC 2025 Order at ¶ 20.

[72] 47 C.F.R. § 1.1411.

for complex make-ready,[73] a misunderstanding that would be avoided by simply adopting the FCC's structure.[74]

Seventh, the rules should not permit utilities to pause attachment timelines to address pre-existing non-compliant conditions that the pole owners have failed to correct or have corrected. As GoNetspeed explained in its Initial Comments, that approach is inconsistent with how the NESC addresses non-compliance. Utilities should, of course, correct any imminent safety hazards immediately and may schedule other corrective work consistent with the NESC, a distinction recognized by other regulators.[75] In many cases, existing deficiencies will be corrected as part of the make-ready process itself, with costs appropriately allocated to the responsible party. But allowing utilities to halt the attachment process indefinitely to remedy unrelated legacy conditions would create a powerful incentive for delay. NECTA similarly agrees that a utility should not be permitted to deny a new attachment based on a pre-existing violation, even where the condition involves a safety issue affecting the pole.[76]

For similar reasons, GoNetspeed agrees with NECTA that the start of the make-ready timeline should not be conditioned on the execution of a new or amended pole attachment agreement,[77] and has updated its proposed rule revisions accordingly. The Departments' Proposed Rules establish no deadline for negotiating or completing such an agreement, leaving utilities free

[73] Verizon Initial Comments at 8 ("For Section 45.11(1), Verizon proposes deleting the reference to Complex Make-Ready because Complex Make-Ready is not subject to work by contractors.").

[74] Notably, while Propose Rule 45.08(6)(c) makes clear that self-help is available if complex make-ready in the communications space is not timely performed, Rule 45.08(5)(b)7 is omits this from the required explanation.

[75] *See e.g.,* Mo. Rev. Stat. § 67.5104(7)(limiting municipal pole owner's statutory right to move an attacher to circumstances involving an "event of an imminent threat to public health, life, or safety").

[76] NECTA Initial Comments, Att. B, p. 21 (May 12, 2026) at 45.08(f)(2).

[77] NECTA Initial Comments at 34.

to postpone the process by declining to finalize the document or by prolonging negotiations over its terms. As a result, the make-ready timeline could be stalled indefinitely before it even begins.

In short, the rules should not embed avoidable delay into the attachment process — particularly where the Proposed Rules already include a good-cause deviation mechanism for the rare circumstances in which timely completion of the work is genuinely infeasible.

Eighth, GoNetspeed agrees with NECTA and other commenters that an estimate process for pre-construction surveys should not be mandated.[78] If a survey estimate process remains, it should be optional for both the pole owner and attacher, and it must be modified to ensure it does not create additional delays and to ensure that attacher cost concerns are addressed in a timely manner.[79] GoNetspeed also opposes Verizon's request for additional time to provide estimates and less time for the attacher to accept estimates. [80] Verizon provides no justification for its proposed changes to these rule sections which, as proposed, align with FCC rules applicable to Verizon across the country.

Finally, the Department should adopt the FCC's rules governing overlashing, as urged by Verizon.[81] Aligning state rules with the federal framework would eliminate unnecessary uncertainty and ensure that routine network upgrades can proceed efficiently without compromising safety or reliability.

[78] NECTA Initial Comments at 20-21; EDC Initial Comments at 17 ("National Grid requests that the Departments clarify that separate estimated and final invoices are not required for survey work when the two are the same.")

[79] *See* NECTA Initial Comments at 20-21.

[80] Verizon Initial Comments at 6.

[81] Verizon Initial Comments at 8-9.

In short, aligning the Department's rules with the FCC's well-established framework would provide clear timelines, preserve utility oversight, and avoid the delays and uncertainty that would otherwise hinder broadband deployment.

B. GoNetspeed Supports NECTA's Revisions to Proposed Rule 45.10(1) Governing Utility Make-Ready Timeline Deviations

GoNetspeed shares NECTA's concern that the "good cause" deviation provision could be misused if it is not clearly limited.[82] When the FCC adopted a similar exception, it made clear that a utility may toll attachment timelines ***only*** for as long as conditions genuinely make it infeasible to complete the work within the prescribed timeframe.[83] The FCC also emphasized that this safety valve is narrow, clarifying that while utilities may pause timelines in extraordinary circumstances, such as emergencies requiring federal disaster relief, they may not do so for routine or foreseeable issues, including repairing damage from seasonal storms, repositioning existing attachments, bringing poles into code compliance, alleged workforce or resource shortages, or awaiting the outcome of regulatory proceedings affecting pole attachments.[84] The Department should incorporate this same clarity in its final rules.

GoNetspeed did not propose revisions to this section in the first round of comments, in part because the deviation provision appeared modelled on the FCC's. Additionally, a limited safety valve at the end of the process – for truly rare circumstances where timely completion of work is genuinely unfeasible — is preferable to proposals that would condition the commencement of attachment timelines on external events, such as government authority. Nevertheless, in light of the concerns raised by NECTA and others, GoNetspeed is further proposing targeted revisions to

[82] *See* NECTA Initial Comments at 30-32.

[83] FCC 2025 Order at ¶ 26, quoting FCC 2011 Order.

[84] *Id*.

the five listed examples of good cause to better align them with the FCC's guidance.[85] GoNetspeed also supports NECTA's proposal to limit any good-cause pause to 90 days, provided that the exceptional timeline remains just that — an infrequent remedy for truly extraordinary circumstances, rather than becoming the default extension period for all timelines.

C. Attachers Agree that OTMR Should Be Available for Large Jobs

Attacher commenters are aligned that the final rules should expand the availability of OTMR to include large jobs.[86] The FCC rules do not limit OTMR to any job size and there is no reason to do so in Massachusetts.

The EDCs suggest that reducing the "small job" category to 10 poles will ensure that OTMR is used more widely,[87] but that assertion is speculative,[88] unsupported and illogical. Nothing in the Proposed Rules prevents an attacher from using OTMR for projects involving 10 or fewer poles; shrinking the category does nothing to expand OTMR's availability and instead risks unnecessarily constraining deployment. As explained in GoNetspeed's Initial Comments, GoNetspeed has successfully used OTMR in neighboring states for deployments involving access to tens of thousands of poles.[89] That direct, large-scale experience demonstrates that OTMR can function effectively well beyond the limited scope the EDCs now suggest.

The EDCs also propose narrowing the definition of "simple" make-ready work to exclude the installation of communications risers, power supplies, and other energized communications

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[85] *See* Appendix A.2, GoNetspeed Revisions, 220 CMR 45.10(1)(a)).

[86] *See e.g.,* NECTA Initial Comments at p. 46 ("[O]rder size is irrelevant to whether the work can safely and efficiently be completed through OTMR. The number of poles in an application should not preclude the use of OTMR where otherwise possible.")

[87] *See* EDC Initial Comments at p. 19.

[88] The EDCs do not themselves perform OTMR, so they have no knowledge or experience on which to base their assertion.

[89] *See* GoNetspeed Initial Comments at 16.

equipment, even when that equipment is located entirely within the communications space.[90] They contend that such work is more complex and potentially dangerous than typical simple make-ready involving communications facilities. But that claim is unsupported and inconsistent with industry practice. Work involving communications equipment in the communications space is routinely performed by qualified contractors and has long been treated as standard communications make-ready. Excluding it from the scope of simple make-ready would needlessly limit the effectiveness of OTMR and undermine the efficiencies the rules are intended to achieve.

D. The Rules Should Retain Self-Help for Electric Survey Work, Add Self-Help for Make-Ready Work Above the Communications Space and for Estimates, and Extend the Contractor Approval Process to EDCs

Without offering any new support or rationale — and despite the Departments having already considered and rejected these arguments — the EDCs renew their objection to allowing attachers to use self-help when the utilities miss survey timelines.[91] GoNetspeed respectfully submits that such a remedy would not be necessary if the EDCs were committed to marshalling the resources needed to perform this work themselves. Yet while the EDCs contend that resource constraints are the core issue, they simultaneously oppose mechanisms that would allow qualified, experienced contractors to assist in addressing what they claim are overwhelming workloads.[92] This "nothing can be done" posture is difficult to reconcile with the clear directive of the Healey-Driscoll administration, which seeks solutions to broadband deployment delays, not excuses for why those delays must persist.

In practice, the EDCs already recognize the value of contractor involvement. National Grid's current pole attachment agreement, for example, allows attachers to perform make-ready

[90] *See* EDC Initial Comments at p. 8.

[91] *See* EDC Initial Comments at 20.

[92] *Id*. at 20-21.

work above the communications space and includes a process for approved contractors to perform survey work.[93] The concept is therefore neither novel nor untested. The Proposed Rules should be revised in accordance with the proposed revisions of both GoNetspeed and NECTA to extend the contractor approval process to the EDCs.

Attachers are largely aligned that self-help should be available when utilities miss deadlines for both survey work — already contemplated in the Proposed Rules — and make-ready work, which the rules should also address. NECTA further proposes extending self-help to the preparation of estimates, a proposal GoNetspeed supports as another practical tool for preventing unnecessary delays.[94] Nor is it necessary, as the EDCs suggest, to add a separate definition of "self-help," as the concept is already well understood in the pole attachment context and adequately reflected in the rules themselves.

E. The Rules Should Encourage, Not Prohibit, NESC Compliant Construction Techniques that Save Time and Money

The final rules should encourage — not prohibit — the use of NESC-compliant alternative construction techniques, such as boxing and extension arms, that can significantly reduce the time and cost associated with make-ready work, and avoid premature pole replacements. The FCC requires pole owners to allow attachers to use these techniques where they allow others to use them or use them themselves. The Departments already examined this issue in D.T.C. 22-4,[95] in which the evidentiary record showed that Massachusetts pole owners do in fact use and permit these techniques where they are appropriate and do not create operational concerns. In that case, the DTC unquestionably had the authority to, and did, conclude that boxing should be allowed unless

[93] Exhibit 3, National Grid Aerial License Agreement at §§ 3.3, 3.8.

[94] NECTA Initial Comments at 45-46.

[95] *CRC Communications LLC, d/b/a OTELCO v. Massachusetts Electric Company d/b/a National Grid, and Verizon New England Inc.,* D.T.C. 22-4.

it presents specific safety issues on a case by case basis, and there is no justification for departing from that determination now.

Contrary to some comments in the record, as ruled by the Department in D.T.C. 22-4, the use of boxing does not inherently violate the NESC. In particular, assertions that boxing conflicts with NESC Rule 236 governing climbing space are incorrect. As explained by NESC expert Larry Slavin in his affidavit submitted in D.T.C. 22-4, boxing can be implemented in a manner fully consistent with the NESC's climbing-space requirements.[96] The evidence in that proceeding demonstrated that these techniques can be deployed safely and effectively when properly engineered and installed.

Importantly, the Proposed Rules do not require utilities to employ boxing or other temporary construction techniques in every circumstance, and GoNetspeed does not suggest otherwise. Rather, the rules should preserve flexibility to use these well-established methods where they are appropriate and NESC-compliant. Prohibiting such techniques outright — as suggested by the Municipal Electric Association of Massachusetts — would violate the Department's prior rulings, limit practical construction options, and needlessly slow broadband deployment without improving safety.

F. The Rules Should Impose Additional Protections Against Unreasonable Charges

The initial comments reflect a shared experience among attachers that final make-ready invoices far exceed pre-paid estimates. GoNetspeed explained that in its experience with Massachusetts pole owners, final invoices are often many multiples more than estimated costs.[97] Similarly, NECTA noted that its members have received true-up invoices that vastly exceed

[96] *See* Exhibit 4, Pre-filed Testimony of Dr. Lawrence M. Slavin in DTC 22-4, dated July 11, 2021.
[97] GoNetspeed Initial Comments at 32-22.

original estimates.[98] GoNetspeed's Revisions would significantly reduce situations in which attaching entities are blindsided by unexpectedly high construction costs after they've been incurred. Additionally, where attachers have reason to believe that non-recurring charges exceed reasonable, cost based amounts, they should be permitted to pay the undisputed portion while the matter is being addressed through a dispute-resolution process. Once they have paid estimated amounts in full, attachers lose all leverage to compel the pole owners to consider their objections, much less issue refunds of any overpayments.

G. GoNetspeed Does Not Oppose Mandatory Post-Attachment Inspections At Reasonable Cost and In Exchange for Certainty That Attachment is Compliant

The EDCs ask the Departments to require mandatory post-attachment inspections at the attacher's expense, with the results reported to the pole owner.[99] GoNetspeed is not opposed to a post-attachment inspection requirement, provided it is structured in a reasonable and predictable manner. Any such inspections should be limited to cost-based recovery, and would benefit from a reasonable fixed unit charge not to exceed a reasonable, fixed amount, such as $50 per pole.

Moreover, once a licensee pays the required inspection fee, the attachment should be deemed compliant unless the licensee subsequently alters the attachment location—regardless of whether the utility actually performs the inspection. This approach is necessary to provide regulatory certainty. Pole owners often attempt to reserve the ability to later declare an attachment non-compliant — even years after installation — regardless of whether the utility previously inspected the attachment or raised no objection at the time. Allowing utilities to revisit compliance indefinitely after collecting an inspection fee would undermine the purpose of the inspection

[98] NECTA Initial Comments at Exhibit 2, Comment ML45 ("NECTA's members have encountered utilities that send "true-up" invoices months or even years later and that vastly exceed the estimate.")

[99] EDC Initial Comments at 17.

process, unjustly enrich the pole owner to the detriment of broadband subscribers, and fail to satisfy the statutory requirement that pole attachment terms and conditions be just and reasonable.

Notably, the proposal is unclear as to which entity would "perform" and "report" these inspections to the pole owner. If the EDCs intend for a third party to conduct them, that approach would further undermine the utilities' repeated claim that safety-related work cannot be delegated. A regime that relies on third-party inspections after construction highlights the hypocrisy of opposing the use of qualified contractors earlier in the process.

H. The Regulations Should Protect Proprietary Information

Multiple parties, including the EDCs, have recognized that the information in pole attachment applications, or discussed in meet-and-confer sessions, contains competitively sensitive information that, if not protected, could be misused for competitive intelligence or marketing purposes by entities that compete directly with the requesting attacher.[100]

In our Initial Comments, GoNetspeed proposed provisions based on existing Maine and California confidentiality regulations. These require that information submitted in advance notices, pole attachment applications, and meet-and-confer sessions be treated as confidential and used only by personnel with a legitimate operational need to manage the pole attachment process. GoNetspeed's Proposed Revisions to section 45.04(5) and 45.05(5). GoNetspeed respectfully urges the Departments to adopt these suggested provisions.

I. The Departments Should Adopt An Accelerated Dispute Process Like that Available for Carrier Disputes

Attacher commenters uniformly support adopting an expedited dispute resolution process similar to the Rapid Broadband Assessment Team ("RBAT") framework or Maine's 7-day Rapid

[100] GoNetspeed Initial Comments at. 30-31; NECTA Initial Comments at 14-15, 17-18; Gateway Initial Comments, D.P.U. 26-10, D.T.C. 26-1, (filed May 12, 2026) at 3-4; EDC Initial Comments at 24.

Response dispute process. The RBAT process offers both prompt, non-binding staff supervised mediation and an accelerated docket for resolving qualifying complaints within 60 days.[101] Since RBAT's adoption in December 2023, numerous parties have made use of the FCC's mediation services and have reported them to be effective in resolving disputes quickly and informally. Although relatively few disputes have proceeded to formal complaints, when they have, the FCC's expedited procedures have delivered timely and practical relief.[102]

Maine's regulations require a recommended decision by the Commission staff within seven days.[103] Similarly, Vermont's rules require a final Commission decision within 30 days.[104] Both frameworks underscore the importance – and demonstrate the feasibility – of an expedited process for resolving pole attachment disputes.

Both mediation and an accelerated complaint process provide attachers with a prompt path for resolving disputes while also creating a meaningful incentive for pole owners to comply with their pole attachment obligations.

By contrast, the complaint process contemplated in the Proposed Rules — which would extend the existing 180-day resolution period to as much as 360 days — is far too slow and costly to function as an effective remedy. As several commenters note, broadband providers increasingly are building networks pursuant to grant programs and other funding sources that impose strict

[101] *See* NECTA Initial Comments at 35-40; ACLP Initial Comments at 10.

[102] *See, e.g., Comcast Cable Communications, LLC v. Appalachian Power Co.,* Proceeding No. 25-330. Comcast's formal complaint was filed at the FCC on November 25, 2025. The FCC's Memorandum Opinion and Order (FCC 26-6), holding that "For over 20 years, the Act and our rules have been interpreted to preclude utilities from requiring a new attacher to pay the entire cost of a pole replacement when a pole already fails to comply with existing safety or engineering standards," was released on February 5, 2026.

[103] Maine PUC Rules, Ch. 880, Appx. A.

[104] VT PUC Rule 3.710(A).

deployment deadlines. A dispute resolution process that may take up to a year to produce a decision offers little practical value in those circumstances. While the Proposed Rules reference the possibility of a future Department-led alternative dispute resolution ("ADR") process, as NECTA observes, the provision in Proposed Rule 45.14(2) is essentially a placeholder: without a defined structure or timeline, it provides no meaningful assurance of timely relief.[105]

Even the EDCs recognize the need for a non-binding ADR option.[106] The model they propose, however — the ADR framework used for distributed generation disputes under the Standards for Interconnection of Distributed Generation tariff — would not provide the speed required in the pole attachment context. That process is structured to take 195 days plus additional time for an ombudsperson's decision, and it requires mediation *before* a formal complaint can be filed.[107] As NECTA explains, some attachers already have been reluctant to pursue complaints under the Department's existing 180-day process, which is faster than the model the utilities propose. Moreover, the FCC has long recognized that an effective dispute-resolution framework must allow attachers to file a complaint at any time. The FCC has ruled that utilities may not impose ADR requirements that function as a barrier to the formal complaint process.[108]

Massachusetts already has experience with voluntary, expedited dispute resolution in the telecommunications context in 207 C.M.R. 15.00. [109] The Commonwealth provides accelerated procedures for resolving disputes among competing telecommunications carriers, including a

[105] NECTA Initial Comments at 36.

[106] EDC Initial Comments at 23.

[107] *NSTAR Electric Company d/b/a Eversource Energy, Standards for Interconnection of Distributed Generation*, M.D.P.U. No. 55D, at 88-91 (May 1, 2026).

[108] *See Cavalier Telephone, LLC v. Virginia Electric and Power Co*., 15 FCC Rcd 9563, 9566 ¶ 5 (2000) (DA 00-1250) ("An arbitration clause cannot be applied to prevent a party from seeking redress with the Commission.")

[109] *See* 207 CMR 15.00.

requirement that the Staff issue a recommended decision within 52 days after the complaint is filed.[110] That framework offers a far more appropriate model for pole attachment disputes here. Adopting a similarly streamlined process would ensure that attachers have access to timely relief while reinforcing the obligation of pole owners to comply with their statutory duties.

J. Tolling

As other commenters have pointed out, the proposed regulations repeatedly misuse the terms "toll" and its variants.

NECTA, for example, correctly states:

> In standard legal usage, "tolling" means the pausing or suspension of a deadline — the opposite of a deadline beginning to run. Under the current proposed language, "begin to toll" would mean that the timelines are stopped (i.e., tolled). The Departments' apparent intent is that the make ready timelines will begin to run after the ten-day period, but the use of the word "toll" introduces confusion.[111]

NECTA further quotes the Black's Law Dictionary (12th ed. 2024) definition of "toll" — "(Of a time period, esp. a statutory one) to stop the running of; to abate."[112]

Verizon also noted the same incorrect and confusing usage of "toll" in the proposed regulations.[113]

GoNetspeed also wishes respectfully to point out that in their initial comments, the EDCs misuse the term in the ***exact same way:*** "whenever licensees are required to make a payment for an estimate for make-ready work, the timeline for make-ready work to be completed will not begin to toll if the licensee indicates when it makes its payment that it challenges the estimate."[114]

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[110] 207 CMR 15.09.

[111] NECTA Initial Comments at 26 (emphasis in original; footnotes omitted).

[112] *Id*. at 26 n. 45.

[113] Verizon Initial Comments at 7.

[114] EDCs' Initial Comments at 15.

GoNetspeed seconds the views of NECTA and Verizon that the mistaken use of "toll" in the proposed regulations (and by the EDCs) creates confusion and should be edited and/or eliminated.

VI. Conclusion

Adopting the proposed regulations, but only as revised by GoNetspeed, would improve the health, well-being, and economic conditions of the Commonwealth through robust broadband expansion and deployment and increased competition. The Departments should do so without further delay,

June 11, 2026

Respectfully submitted,

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Appendix A.2

Proposed Rules with GoNetspeed Revisions

DPU-DTC Joint Proposed Amendments to Regulations

220 CMR 45.00

Attachment B – Clean Regulations (Proposed)

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220 CMR: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 45.00: POLE ATTACHMENT, DUCT, CONDUIT AND RIGHT-OF-WAY ACCESS, REMOVAL, COMPLAINT AND ENFORCEMENT PROCEDURES

Section

45.01: Purpose and Applicability

220 CMR 45.00 effects legislative policy in favor of competition and consumer choice in telecommunications, ~~while also preserving consumer protections to ensure utility services are safe, secure, reliable, and affordable,~~ by providing access, ~~removal,~~ complaint, and enforcement procedures that: (1) ensure that telecommunications carriers and cable system operators have nondiscriminatory access to poles, ducts, conduits, and rights-of-ways owned or controlled, in whole or in part, by one or more utilities with rates, terms and conditions that are just and reasonable; ~~and~~ (2) consider the interests of both consumers of utility services and subscribers of telecommunications and cable television services in the safety, reliability and affordability of those services; and (3) provide procedures for hearing and resolving complaints concerning pole attachment access, rates, terms and conditions. The general procedural rules set forth at 207 CMR 1.00: Procedural Rules and 220 CMR 1.00: Procedural Rules are also applicable except to the extent that they are inconsistent with 220 CMR 45.00.

For purposes of enforcement and dispute resolution, the following regulations will take effect 90 days after final publication in the Massachusetts Register: 220 CMR 45.06: Utility Poles – Attachment Application Size through 220 CMR 45.12: Utility Poles – Overlashing Wires in the Communications Space, and 220 CMR 45.17: Annual Informational Filings and Website Postings. These regulations will apply to all pole attachment applications pending with a Utility as of the date these regulations take effect.

45.02: Definitions

For the purposes of 220 CMR 45.00, the following terms are defined as follows, unless the context otherwise requires:

Appropriate Government Authority. A government entity with jurisdiction over the public rights-of-way affected by a new licensee's proposed project, that may be involved in approving permits or other requests necessary to complete a new licensee's project, or that may be asked to provide resources to facilitate completion of a new licensee's project.

Attachment. Any wire or cable for transmission of intelligence by telegraph, wireless communication, telephone, television, including cable television, or other means of telecommunication, or for the transmission of electricity for light, heat, or power and any related device, apparatus, appliance, or equipment installed upon any pole or in any telegraph or telephone duct or conduit owned or controlled, in whole or in part, by one or more utilities.

Communications Space. The lower usable space on a pole, which typically is reserved for low-voltage communications equipment and facilities and is separated from the electric supply space by a communication worker safety zone as defined in the NESC.

Complainant. An Applicant, L~~l~~icensee, including a New Licensee or Existing Licensee, ~~or~~ a U~~u~~tility, or an association of any of the foregoing entities, that files a complaint pursuant to 220 CMR 45.15: Formal Complaint Procedure.

Complaint. A petition with supporting documentation filed by either a licensee or a utility concurrently to the Department of Public Utilities and the Department of Telecommunications and Cable pursuant to 220 CMR 45.15: Formal Complaint Procedure. A complaint shall constitute an initial pleading within the meaning of 207 CMR 1.04(1) and 220 CMR 1.04(1).

Conduit. A structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

Cyclical Pole Inspection Report. Any report that a utility creates in the normal course of its business that sets forth the results of a routine inspection of its poles during the utility's normal pole inspection cycle.

Department. The Department of Public Utilities and the Department of Telecommunications and Cable.

Duct. A single enclosed raceway for conductors, cable and/or wire.

Electronic Notification Software System. An electronic software system (e.g., NJUNs, AldenOne, etc.) that processes, coordinates, and/or consolidates Utility pole-related data that may include data related to the ownership, geographic location, size, and class of Utility poles and the communications and electric facilities on the Utility poles, to facilitate notifications regarding the placement, replacement, or removal of a Utility pole, Make-Ready and correction of non-compliant Utility pole conditions.

EVSE. Electric vehicle supply equipment.

Licensee. Any person, firm, or corporation, inclusive of wireless providers, other than a utility, that is authorized to construct lines or cables, including EVSE attachments, upon, along, under, and across the public rights-of-way. For the purposes of 220 CMR 45.02: Licensee, the term shall also include a municipality or municipal lighting plant or cooperative that operates a telecommunications system outside the limits of its service territory pursuant to M.G.L. c. 164, § 47E, but only with respect to attachments located outside its service territory. A licensee shall be classified as either an "existing licensee," or a "new licensee," depending on the circumstances surrounding a particular attachment or attachment application.

Existing Licensee. Any ~~person, firm, or corporation, including a municipality and municipal lighting plant, other than a utility,~~Licensee with an authorized attachment installed or in the process of being installed upon any pole or in any duct or conduit owned or controlled, in whole or in part, by one or more utilities.

New Licensee. Any person, firm, or corporation, including a municipality and municipal lighting plant, other than a utility, requesting to install a new or upgraded attachments upon any pole or in any duct, ~~or~~ conduit or right-of-way owned or controlled, in whole or in part, by one or more utilities. A new licensee includes any existing licensee that submits an application to one or more utilities to install a new attachment upon a pole or in any duct or conduit owned or controlled, in whole or in part, by the utilities.

Make-Ready. The modification or replacement of a pole, or of the lines or equipment on a pole, ~~to accommodate new~~necessitated solely by ~~or upgraded telecommunications~~a Licensee, including those of advanced telecommunications capability, and cable television attachments.

Complex Make-Ready. Transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage to any attachment or pole, including, but not limited to, the splicing of an existing attachment, the relocation of an existing wireless attachment, or the relocation of an EVSE attachment. An attachment application shall be considered to require complex make-ready if it necessitates work above the communications space, or necessitates a pole replacement~~, or involves wireless telecommunications attachments generally~~.

Simple Make-Ready. Make-ready where attachments in the communications space of a pole could be modified or transferred without any reasonable expectation of a service outage or damage to any attachment or utility pole, and does not require the splicing of an existing attachment, the relocation of an existing wireless attachment, the relocation of an EVSE attachment, the replacement of a pole, or the involvement of any other wireless activities.

NESC. The National Electrical Safety Code.

~~NJUNS. The National Joint Use Notification System.~~

OSHA. Occupational Safety and Health Administration.

OTMR. One-Touch Make-Ready. The process by which a new licensee opts to perform all simple make-ready required to accommodate a new attachment in the communications space on a pole or, if authorized by the electric utility, above the communications space on a pole, as authorized by 220 CMR 45.09.

Respondent. A L~~l~~icensee or a U~~u~~tility against which a petition for interim relief or formal complaint has been filed pursuant to 220 CMR 45.14: Petitions for Interim Relief and Alternative Dispute Resolution Procedure or 220 CMR 45.15: Formal Complaint Procedure.

Usable Space. The total space which can be used for attachment of wires, cables, and associated equipment, and which includes space occupied by the utility~~would be available for attachments~~, without regard to attachments previously made:

(a) upon a pole above the lowest permissible point of attachment of a wire or cable upon such pole which will result in compliance with any applicable law, regulation, or electrical safety code; or

(b) within ~~any telegraph or telephone duct or conduit~~ Conduit that is available, or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable and associated equipment for telecommunications or cable services, and which includes capacity occupied by the utility.

Utility. Any person, firm, corporation, or municipal lighting plant that owns or controls, or shares ownership or control of, poles, ducts, conduits, or rights-of-way used or useful, in whole or in part, for supporting or enclosing wires or cables for the transmission of intelligence by telegraph, telephone, or television, or for the transmission of electricity for light, heat, or power. Any person, firm, corporation, or municipal lighting plant that occupies space on poles, ducts, conduits or rights of way it does not own or control, is not a utility with respect to such poles, ducts, conduits or rights of way.

Wireless Attachment. An attachment ~~responsible~~ of wireless transmission or reception equipment used for wireless activities, including, but not limited to, those involving mobile, fixed, and point-to-point wireless communications or the provision of wireless internet service.

45.03: Computation of Time

Computation of any period of time referred to in 220 CMR 45.00 shall begin with the first day following the day on which the act that initiates such period of time occurs. The last day of the period so computed shall be included unless it is a day that the Department is closed, in which event the period shall run until the end of the next following business day. When such period of time, with intervening Saturdays, Sundays, and legal holidays counted, is five calendar days or less, the said Saturdays, Sundays, and legal holidays shall be excluded from the computation; otherwise, such days shall be included in the computation.

45.04: Duties of Licensees and Attachment Owners

(1) Except as set forth in 220 CMR 45.00, n~~N~~o person, firm, or corporation shall install an attachment upon any pole, duct, conduit, or right-of-way owned or controlled, in whole or in part, by one or more utilities without the consent of the utility ~~and any appropriate government authority~~. Unauthorized attachments may be subject to removal by a utility.

(2) ~~Joint Utility Electronic Notification Database~~Electronic Notification Software System s. All licensees on poles located on public rights-of-way shall:

(a) register and participate in any widely available, reasonably priced ~~joint utility electronic notification database~~Electronic Notification Software System Electronic Notification Software System ~~such as NJUNS~~ utilized by the utilities that are subject to M.G.L. c. 164, § 34B;

(b) maintain a current contact, including the individual's name, telephone number, and e-mail address, within ~~NJUNS~~ the Electronic Notification Software System and any successor database to receive next-to-go notifications relating to the licensee's attachments, and to facilitate make-ready or other work identified by a next-to-go notification; and

(c) update the Electronic Notification Software System ~~NJUNS~~ and any successor database with all relevant information relating to any work performed by the licensee on its attachments, including self-help and OTMR work, or affecting a pole, duct, conduit, or right-of-way no later than five business days after said work is completed.

(3) When an existing licensee receives a next-to-go or other notification ~~from a utility, a new licensee, NJUNS, or any successor database to NJUNS~~through the Electronic Notification Software System, informing the existing licensee of its duty to modify one or more of its attachments as part of the make-ready process, the existing licensee shall complete such work within ~~a reasonable time in coordination with the utility and other licensees to the pole~~the time set forth in 220 CMR 45.08. ~~For make-ready in the communications space, f~~Failure to complete such work within a reasonable time may result in modification of the existing licensee's attachment by a new licensee pursuant to the self-help provisions identified in 220 CMR 45.08(6).

Commented [GNS1]: The purpose of self-help is to eliminate delays in attachment by allowing the licensee to perform surveys and make-ready work when timelines are missed or when the work is so simple the licensee may use a qualified contractor to perform the work without waiting months. The attachment can be made once make-ready work is completed using either self-help or OTMR and so a license may not be issued until after the attachment is made at the time of a post-attachment inspection.

Commented [GNS2]: FCC rules provide a self-help right for make-ready work in the power supply space. This should be a requirement in Massachusetts.

(4) Consistent with M.G.L. c. 166, § 31, the owner of an attachment located on a pole shall affix to such an attachment an identification tag listing, at a minimum, the name or initials of the owner. The identification tag shall be affixed on or near each pole where the attachment is installed and must be maintained in legible condition.

(5) (a) Any licensee or attachment owner shall maintain the confidentiality of all data and information contained in or submitted through any joint-use software system, as well as any information received from a utility or other attaching entity in connection with requests for information or requests for access to poles or other support structures. Such information includes, but is not limited to, pole attachment locations, descriptions, and specifications; pole attachment applications; requests for information and responses thereto; information regarding the availability of surplus space or excess capacity; and any maps, plans, drawings, or other materials designated as confidential or proprietary. (b) A licensee or attachment owner shall not disclose such confidential or proprietary information except to personnel with an actual, verifiable need to know for the purpose of preparing or responding to requests for information or requests for access. Licensees shall take all reasonable precautions to prevent unauthorized disclosure and shall ensure that employees with access to such information are informed of and comply with these nondisclosure obligations. Violations of this obligation may result in sanctions imposed by the Commission and may give rise to additional remedies available under applicable law.

Commented [GNS3]: Follows ME and CA, which recognize the need to protect attacher proprietary information against misuse by competitors.

45.05: Duties of Utilities

(1) In accordance with M.G.L. c. 166, § 25A, a utility shall provide a licensee with nondiscriminatory access to any pole, duct, conduit, or right-of-way used or useful, in whole or in part, owned or controlled by it. Notwithstanding this obligation, a utility may deny a new licensee access to its poles, ducts, conduits, or rights-of-way on a nondiscriminatory basis for valid reasons of insufficient capacity, reasons of safety, reliability, or generally applicable engineering standards provided that the utility shall expand capacity where it can reasonably do so through make-ready work . Any exclusive contract between a utility and an existing licensee entered into or extended after August 18, 2000, concerning access to any pole, duct, conduit, or right-of-way owned or controlled, in whole or in part, by such utility shall be presumptively invalid insofar as its exclusivity provisions are concerned, unless shown to be in the public interest.

(2) Requests for access to a utility's poles, ducts, conduits, or rights-of-way owned or controlled, in whole or in part, by one or more utilities must be in ~~an adequately descriptive~~ writing, including via links, directed to the appropriate named recipient identified by the utility on its website in accordance with 220 CMR 45.17(2)(e). A utility shall confirm in writing the approval or denial of a new licensee's request for access no later than the date established by 220 CMR 45.08(2)(f) for non-OTMR applications and by 220 CMR 45.09(2)(g) for OTMR applications. For all other requests for access, the utility shall confirm in writing the approval or denial of the request no later than 45 days after submission of the request. In all instances, a utility's denial of access shall be specific, shall include all relevant information supporting its denial, and shall explain how such information relates to a denial of access, as applicable, for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.

(3) A utility shall use a widely available, reasonably priced Electronic Notification Software System for notices and work covered by the rules in 220 CMR 45.00. Information concerning the Electronic Notification Software System shall be posted on the utility's website in accordance with 220 CMR 45.17. A utility shall make electronic payment methods available to licensees whenever a payment is required by 220 CMR 45.00 and may assess a reasonable charge to licensees for electronic payments other than for an

electronic funds transfer or other debit transaction which shall not be assessed any charge.

(4) (a) A utility shall provide an existing licensee no less than 60 days' written notice prior to:

1. removal of that licensee's existing attachment or termination of any service to that attachment, with such removal or termination arising out of a rate, term, or condition of the attachment agreement between the licensee and the utility;
2. any change in attachment rates, terms, or conditions, along with the utility's calculation of the new rate, the utility's FERC Form 1 or FCC Report 43-01 the ARMIS Annual Summary Report From , and supporting documentation for other data used in the calculation of the rate, including sole and joint ownership information used to calculate pole equivalents, appurtenance investment and average pole heights; or
3. any modification of facilities other than the exceptions enumerated under 220 CMR 45.05(4)(d).

(b) Any existing licensee that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or rights-of-way accessible.

(c) Any licensee that obtains an attachment to a pole, duct, conduit, or right-of-way shall not be responsible for the costs of rearranging or replacing its attachment if such changes are required due to a new attachment or the modification of an existing attachment requested by another entity, including the owner of such pole, duct, conduit, or right-of-way.

(d) Exceptions: A utility may provide to an existing licensee or an entity with an unauthorized attachment less than 60 days' written notice of ~~removal, change, or~~ modification if such ~~removal, change, or~~ modification of the attachment is due to routine maintenance or ~~,~~ an emergency~~, the need to accommodate a small or large clean energy infrastructure project, or the need to accommodate make-ready for an application submitted pursuant to 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option~~. A utility shall make a

good faith effort to identify the owner of an unauthorized attachment. If, after such effort, the owner cannot be identified, the utility may remove the attachment without providing 60 days' prior notice.

(e) When a utility provides an existing licensee with less than 60 days' written notice, the utility shall make reasonable efforts to provide the licensee with as much notice as practicable under the circumstances.

(5) (a) A utility shall maintain the confidentiality of all data and information contained in or submitted through any Electronic Notification Software System , as well as any information received from an entity seeking access to poles or other support structures. Such information includes, but is not limited to, pole attachment locations, descriptions, and specifications; pole attachment applications; requests for information and responses thereto; information regarding the availability of surplus space or excess capacity; and any maps, plans, drawings, or other materials that disclose an attacher's network plans or potential areas of competition.

(b) A utility shall not disclose such confidential or proprietary information except to personnel with an actual, verifiable need to know for the purpose of responding to requests for information, evaluating access requests, or administering pole attachment processes. Utilities shall take all reasonable precautions to prevent unauthorized disclosure and shall ensure that employees with access to such information are informed of and comply with these nondisclosure obligations. Under no circumstances shall a utility disclose confidential or proprietary information to marketing, sales, customer service, or other personnel engaged in competitive business activities. Violations of this obligation may result in sanctions imposed by the Departments and may give rise to additional remedies available under applicable law.

45.06: Utility Poles – Attachment Application Size

(1) For the purposes of 220 CMR 45.00, an application to attach to a utility's poles by a licensee for the provision of a telecommunications service, including one of advanced telecommunications capability, or cable television shall be categorized by the number of poles identified in the attachment application, as detailed below. The utility may treat multiple applications from a single licensee within ~~a 60-day period~~a calendar month as a single request if the applications are part of a single, unified network process. In such cases, the applicable timelines identified in 220 CMR 45.07 through 220 CMR 45.09 will restart based on the filing date of the most recent application, and the total number of poles across all applications will determine the category of the combined request.

(a) Small Orders. Attachment requests up to the lesser of 50 poles or 0.1 percent of the utility's poles in Massachusetts.

(b) Regular Orders. Attachment requests exceeding small orders up to the lesser of 300 poles or 0.5 percent of the utility's poles in Massachusetts.

(c) Mid-Sized Orders. Attachment requests exceeding regular orders up to the lesser of 3,000 poles or 5.0 percent of the utility's poles in Massachusetts.

(d) Large Orders. Attachment requests exceeding mid-sized orders up to the lesser of ~~5~~6,000 poles or 10.0 percent of the utility's poles in Massachusetts.

(e) Very Large Orders. Attachment requests greater than the lesser of 6~~5~~,000 poles or 10.0 percent of the utility's poles in Massachusetts.

(2) For applications involving poles jointly owned by an electric municipal lighting plant utility and a telephone utility, ~~for both utilities,~~ the applicable order application size, timelines, and related requirements identified in 220 CMR 45.07 through 220 CMR 45.12, applicable to the electric municipal lighting plant shall be based on the size of the application to the municipal lighting plant. The joint owner must comply with the timelines applicable to the size of the application to the joint owner.

Commented [GNS4]: The FCC rules define timelines by the number of poles on applications filed in a 30 day period. This is a critical difference and significantly impacts the pace with which attachment applications will be processed in Massachusetts. The 60 day timeframe would dramatically increase the time to build in Mass for new entrants seeking to deliver high-speed service across large areas or multiple communities in the Commonwealth.

Commented [GNS5]: This change is necessary to be consistent with the FCC rules which govern in 27 states regulated by the FCC, such as in neighboring state of RI, and states that have adopted the FCC pole attachment rules wholesale, such as Pennsylvania and West Virginia.

45.07: Utility Poles – Advance Notice and Meet-and-Confer Requirements

(1) Advance Notice.

(a) For anticipated applications involving mid-sized, large, and very large orders to be submitted pursuant to 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option, a new licensee for telecommunications, including those of advanced telecommunications capabilities, or cable television attachments shall provide advance written notice concurrently to each utility~~, existing licensee in the communications space, and appropriate government authority~~ which would be affected by or require action relating to the anticipated work. New licensees may rely upon tags on poles as well as information posted by the Utility on its website in accordance with 220 CMR 45.17 to identify the utility. Such notice shall be provided at least 14~~90~~5 days in advance for mid-sized orders and at least ~~90~~ 60 days in advance for large and very large orders.

(b) At a minimum, such advance notice shall contain:

1. the name, telephone number, and e-mail address of the applicant;
2. a description of the proposed deployment area(s) by municipality and route(s), in order of priority;
3. a target build-out schedule for each of the proposed deployment area(s) and route(s);
4. an indication of whether the project is being funded by a government source that requires build-out by a date certain or the new licensee risks losing said funding and, if so, identify the funding source and the end date by which the project may be jeopardized;

~~5.~~ a request to meet-and-confer within 30 days of the notice date for ~~6. mid-sized orders and within 60 days of the notice date for~~ large and very ~~7.~~5. large orders; and

~~8.~~6. the name, telephone number, e-mail address, job title, and business affiliation of each individual who received a copy of the advance written notice.

Commented [GNS6]: The FCC's most recent pole attachment Order adopted this advance notice requirement but requires 15 days for mid-size and 60 days for large jobs (not 45 and 90 days) recognizing that otherwise, the attachment timelines would be unreasonably extended. The proposed 15 and 60 days is not only consistent with the FCC's new rules, it is more than enough time for utilities to make accommodations in their labor and material resources which they routinely make much more quickly when responding to weather events and their own construction needs. Similarly, government authorities have their own timelines that already account for their preparatory needs by building in extra days. They require no additional advance notice.

Commented [GNS7]: Again, the FCC recently adopted this but limited the meet and confer to large jobs. Notice alone is sufficient for mid-sized orders.

(c) Failure to Provide Advance Notice.

1. If a new licensee files an attachment application without the required advance written notice~~, including the required minimum information,~~ then the utility may notify the new licensee and any jointly-owning utility within ten business days that the notifying utility is treating the date of filing of such application as the beginning of the ~~45~~15-day advance notice for mid-sized orders or the ~~90~~60-day advance notice for large orders.
2. Such notice from the utility to the licensee shall indicate that the application initiates the advance notice period and that the applicable timelines identified in 220 CMR 45.07 will ~~not begin to toll until~~begin after the relevant advance notice period has ended. The notice shall also state that the licensee must request the meet-and-confer required by 220 CMR 45.07(2) within five business days. ~~At the end of the advance notice period, the new licensee must submit either a new application or notify the utility and any jointly-owning utilities that the new licensee intends to proceed with its original submission as its application.~~

~~3. If the new licensee does not request the meet-and-confer described in 220 CMR 45.07(2) within five business days after the utility notifies the new licensee of their failure to provide the required advance written notice, the new licensee's application will be considered void. In such a circumstance, the utility shall notify the new licensee and any jointly-owning utility in writing within three business days that the application is voided.~~

(2) Meet-and-Confer Requirements.

(a) No later than 30 days after~~the date of the notice for mid-sized orders and no latethan 60 days after~~ the date of the notice for large and very large orders, the new licensee and ~~,~~ utilities~~, and existing licensees in the communications space~~ shall meet-and-confer to engage in good faith discussions regarding the mechanics and timing of the application and implementation schedule. ~~Invitations to attend and participate in this meet-and-confer shall be sent as soon as~~

~~practicable by the new licensee to each appropriate government authority that received notice.~~

(b) The entities subject to this meet-and-confer requirement shall find a mutually agreeable date and time for the meeting (which can take place in-person, virtually, or by phone) within the requisite timeframe after the advance notice is provided.

45.08: Utility Poles – Non-OTMR Option – Timelines, Application, Survey, Make-Ready, and Related Requirements for Access

~~(1)~~ Applicability. The non-OTMR process identified in 220 CMR 45.08 shall be limited to new licensees seeking to attach telecommunications, including those of advanced telecommunications capabilities, and cable television provider facilities to the communications space of a pole. The non-OTMR process identified in 220 CMR 45.08 shall apply if ~~one of the following conditions are met:~~

~~(2) the application is categorized as a small, regular, or mid-sized order but includes attachments that require complex make-ready;~~

~~(3)~~(1) ~~the application is characterized as large or very large order; or~~

~~if~~ a new licensee does not elect to proceed with the OTMR option identified in 220 CMR 45.09 in its initial application to the utility for the project.

~~(4)~~(2) Application and Survey Process.

(a) If no single application process exists between utilities that jointly own poles, within 30 days of these rules becoming effective, the utilities shall appoint a single pole administrator to process pole attachment applications for both utilities. The identification and contact information for the single pole administrator shall be posted on the utility's website in accordance with 220 CMR 45.17. ~~then a~~A new licensee shall ~~concurrently~~ submit pole attachment applications to ~~each utility that shares ownership of the poles identified in the application~~the single pole administrator. ~~The licensee shall also include in a cover letter the contact information for the individual(s) at each utility to whom the respective application(s) were submitted.~~

(b) If a new licensee anticipates utilizing overlashing in connection with the work described in its pole attachment application, then it shall provide documentation of any overlashing approvals it has received from existing licensees and comply with the requirements identified in 220 CMR 45.12(3)(a).

(c) A utility shall confirm receipt of an attachment application through a written notice provided to the applicant and any utility that jointly owns any poles identified in the application within one business day of receiving the application.

Commented [GNS8]: This change is needed to eliminate delays caused by joint owners failing to agree and to eliminate unnecessary costs incurred by having to proceed through duplicative survey and engineering processes.

(d) Application Completeness.

1. ~~A utility shall review a new licensee's attachment application for completeness before reviewing the application on its merits.~~ A new licensee's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master pole attachment agreement or in requirements that are available in writing publicly at the time of application's submission, to begin to survey the affected poles.
2. Within ten business days ~~for small and regular orders, 15 business days for mid-sized orders, and 30 days for large and very large orders~~ following the receipt of an attachment application from a new licensee, the utility shall assess the application for completeness and notify both the licensee and any utilities that jointly own the poles identified in the application in writing of its determination. As part of its notification, i~~I~~f a utility determines that the application is incomplete, it must specify the reasoning for its determination in the notification. If the utility does not respond within 10 business days of receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reason in support of its rejection, the application shall be deemed complete.
3. Resubmission Process.
   (1) A new licensee may resubmit an application within ten business days after receiving notice that the original submission was incomplete. If the resubmission is not made within ten business days, the utility may treat the resubmission as a new application and notify the new licensee and jointly-owning utilities accordingly. A timely resubmission need only address the deficiencies identified in the utility's notice.
   (2) A utility shall determine within ~~1~~5 business days whether the resubmitted application is complete and notify the licensee and jointly-owning utilities of that decision. If the utility determines that the resubmitted application is still incomplete, it must specify

Commented [GNS9]: Conformed to FCC timeline.

Commented [GNS10]: Conformed to FCC timeline.

the deficiencies that were not addressed and why the resubmission failed to resolve them.

(3) The new licensee may resubmit its application as many times as it chooses within 60 days of the initial application if in each case the licensee makes a good faith effort to address the deficiencies identified by the utility. For each resubmission, the utility shall have ~~1~~5 business days to review and respond, as specified above.

(4) A utility may not charge a separate application fee for any resubmissions made in accordance with this process within 60, 75 or 90 days, as applicable, of the new licensee's initial application.

(e) Survey Estimate and Payment.

1. Unless already addressed in a pole attachment agreement between the new licensee and the utility or through an existing practice of the utility for payment of reasonable survey costs at the time of application, w~~W~~hen a utility provides notice to a new licensee that an application is complete, it shall also present to the new licensee a detailed, itemized estimate of charges to perform all necessary survey work. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, internal and external labor hours and costs, gas mileage, and other related costs that form the basis of the estimate.

2. A new licensee may dispute or accept an estimate and make payment within 30 days after receipt of an estimate, otherwise the ~~contract~~ estimate may be withdrawn~~is voided~~. A utility shall not be required to conduct survey work until it receives payment from the new licensee in the ~~full~~ undisputed amount of the estimate.

3. Final Invoice. After the utility completes all survey work, it shall provide the new licensee with a detailed, itemized final invoice for the actual survey charges incurred. The utility shall provide documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, and other related costs that

form the basis of its invoice, and explain with documentary support any ~~substantial~~ overages ~~from~~ that exceeds 5.0 percent of the initial estimates. In no event may the invoice exceed the estimate by more than 15 percent. The cost of the survey work shall not increase solely as a result of the utility's inability to complete the survey in a timely manner.

~~3.~~4. Survey charges must be reasonable, consistent with prevailing industry charges for similar work, and cost based.

(f) Survey and Application Review on the Merits.

1. A utility shall coordinate and confer with any jointly-owning utilities to complete a survey of poles for which access has been requested and shall, in coordination with any jointly-owning utilities, conduct the survey, review the application on its merits, and provide a written response to the new licensee either granting or denying access within the following timeframes from the receipt of a complete application: 45 days for small and regular orders, 60 days for mid-sized orders, or 90 days for large orders. For very large orders, the utility, any jointly-owning utilities, and new licensee shall negotiate in good faith to establish the timeline for completing survey work and issuing a written decision either granting or denying access. A utility shall notify a new attacher within 15 days of receipt of a complete application if the utility knows or reasonably should know that it cannot meet the survey deadline. A new attacher can elect self-help for the survey work pursuant to 220 CMR 45.08(6)(a) any time after it receives the utility's notice.

Commented [GNS11]: Conforms to FCC.

2. A utility shall permit the new licensee, any existing licensees on the affected poles, and any jointly-owning utilities, to be present for any field inspection conducted as part of the utility's survey. A utility shall use commercially reasonable efforts to provide the affected licensees and jointly-owning utilities with at least three business days' advance notice of any field inspection as part of the survey and shall provide the date, time, and location of the survey, as well as the name, telephone number, and e-mail address of the contractor or employee performing the survey.

(1) A utility may not deny the new licensee pole access based on a preexisting violation not caused by any prior attachments of the new licensee, unless the violation involves a threat of imminent harm to persons or property ~~safety issue~~ or impacts the structural integrity of the pole. In any instance where a preexisting violation is identified by the utility that involves a threat of imminent harm to persons or property requires and corrective work outside the communications space, the utility shall promptly correct the violation. Where a violation requires work by parties other than the utility, the utility ~~it~~ shall update ~~NJUNS~~ the Electronic Notification Software System ~~or any successor database~~ on the details of the violation and notify the jointly-owning ~~utility of the violation. The utility shall also notify~~and any existing licensee potentially responsible for the violation, identifying the location of the pole, describing the violation, ~~and requesting details from the existing licensee on how and when the violation will be resolved~~require the violator to promptly correct violations creating imminent threat of harm and to correct other violations within 30 days.

(2) The utility shall permit the new licensee an opportunity to modify and resubmit its application within ten business days based on the utility's denial of access.

~~(5)~~(3) Make-Ready Cost Estimate and Payment.

(a) Cost Estimate. For all applications other than very large orders, where a new licensee's request for access is not denied, a utility shall present to the new licensee a detailed, itemized estimate, on a pole-by-pole basis where requested, of costs to perform all necessary make-ready within ten business days of notifying a licensee that their attachment application has been approved on the merits, or in the case where a new licensee has performed a self-help survey pursuant to 220 CMR 45.08(6)(a), within ten business days of receipt by the utility of such survey. If the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present costs on a per-job basis rather than present a pole-

Commented [GNS12]: The NESC distinguishes between non-compliant conditions that may be scheduled for correction and those that require immediate attention. Also, the FCC rules do not permit the utility to deny access based on alleged safety issues since non-compliance with governing standards – even if only technical – may always be characterized as safety related. The important question is how the NESC – the standard bearer for pole safety – classifies the violation. If it is one that can be scheduled for correction – not immediately addressed – then the utility may not deny access on this ground.

Commented [GNS13]: In many cases the utility has created a violation when it adds equipment to a pole after an attachment is made. In other cases, the non-compliant condition was created so many years ago it is difficult to determine which entity caused the violation. At the end of the day, if the violation must be remedied by a pole replacement, the utility stands to benefit significantly from the installation of a brand new, taller, stronger pole. Accordingly, it is important to clarify that the utility or its joint own may bear responsibility for the correction.

by-pole estimate for those fixed costs. The utility shall provide documentation and calculations that are sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate. A utility, any jointly-owning utilities, and the new licensee shall negotiate in good faith the timeline for completing make-ready cost estimates for very large orders.

(b) Information from Cyclical Pole Inspection Reports.

1. Within five business days of receiving a make-ready cost estimate, a new licensee may request in writing that the utility provide, as to the poles requiring replacement as a result of the application, a copy of the utility's most recent cyclical pole inspection report for each pole that would require replacement, or, if available, any more recent pole inspection report. The utility shall provide the new licensee with this information within five business days of the new licensee's written request.

~~2.~~ After requesting and receiving copies of the requested pole inspection reports, a new licensee may amend an attachment application or seek adjustments to the make-ready cost estimate to account for information contained in the pole inspection report within five

~~3.~~2. business days.

(1) A utility that receives ~~such~~ an amended attachment application may, at its option, restart the period for responding to the application and conducting the survey as if the application were newly filed.

(2) A utility electing to restart the period shall notify the licensee of its intent to do so within five business days of receipt of the amended application.

~~(2)~~(3) The timelines in 220 CMR 45.00 may be tolled for up to 30 days where the licensee seeks adjustments to the make-ready cost estimate.

(c) Withdrawn Estimate.

Commented [GNS14]: The reports may show that certain poles already require replacement.

1. If the new licensee fails ~~to submit payment to the utility for~~accept the make-ready cost estimate within ten business days of receiving the cost estimate from the utility, or within ten business days of receiving cyclical pole report data from the utility if requested by the new licensee in accordance with 220 CMR 45.08(3)(b), excluding any tolled period, the utility may withdraw the cost estimate to perform make-ready. If the utility withdraws the cost estimate, the utility shall notify the new licensee and any jointly-owning utilities of the withdrawal.
2. If the estimate is withdrawn, the new licensee may submit a single request for updated cost estimates from a utility and any jointly-owning utility no later than 45 days after the original withdrawing utility provided the original estimate. The utilities shall provide the updated estimates within ten business days. If payment is not received from the new licensee within ten business days of receipt of an updated estimate, a utility may withdraw the updated cost estimate and shall notify the new licensee and any jointly-owning utilities of the withdrawal.
3. If the new licensee has not paid in full a make-ready cost estimate or made a partial payment allowed under its pole attachment agreement or by the utility, within 60 days of receiving the initial or updated estimate, as applicable, then the new licensee's application and any corresponding survey work conducted in response to the application may be voided by the utilities. If a utility seeks to void a new licensee's application or any corresponding survey work conducted in response to the application, it shall notify the new licensee and any jointly-owning utility by written notice that clearly identifies the date on which it proposes to void the application or survey work and provide the applicant 30 days to make payment or the application and/or survey work is void.
4. Municipal New Licensee. Pursuant to M.G.L. c. 41, § 56, written notice of acceptance of a make-ready cost estimate shall satisfy the requirements of 220 CMR 45.08(c) in lieu of payment when the new licensee is a municipality, or any political subdivision thereof. Payment in full shall be

provided by such a new licensee within 30 days of receipt of a final invoice provided pursuant to 220 CMR 45.08(3)(d).

(d) Final Invoice. After the utility completes make-ready to accommodate the new licensee's attachment, the utility shall provide the new licensee with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new licensee's attachment. If the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may instead present those costs on a per-job basis for those fixed costs. The utility shall provide documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, and other related costs that form the basis of its invoice, and explain with documentary support and corresponding calculations any ~~substantial~~ overages from the initial estimates of 5.0 percent or more. In no event may the invoice exceed the estimate by more than 15 percent without prior approval of Licensee. The cost of make-ready work shall not increase solely as a result of the utility's inability to complete the make-ready work in a timely manner.

A utility may not charge a new licensee to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards or guidelines if the non-complia

(e) nce is due to work performed by an entity other than the new licensee prior to the new attachment or the pole already requires replacement.

~~(6)~~(4) Permitting and Governmental Approvals.

(a) Required.

1. In coordination with any jointly-owning utilities and after the utilities have received full payment for their make-ready estimates, within 15 business days ~~for small and regular orders, 30 days for mid-sized orders, and 60 days for large orders~~, a utility shall submit to the appropriate government authorities any necessary permitting or approval applications required to complete its make-ready. A utility, any jointly-owning utilities, and the new licensee shall negotiate in good faith and coordinate the timeline for

submitting to the appropriate government authorities all permitting and approval applications for very large orders.

2. Upon request, a utility shall provide a copy to the new licensee of each permitting and approval application submitted to the appropriate government authorities.
3. A utility shall provide on at least a monthly basis regular, written updates to new licensees and jointly-owning utilities on to the status of any pending permitting and approval application requests submitted to all government authorities whose approvals are necessary to commence any make-ready identified for the new licensee's request.
4. A new licensee shall respond within five business days to any written requests for information from a utility to respond to government authority inquiries relating to the permitting and approval applications. If a government authority rejects or requests modification to any make-ready identified in a permitting or approval application, then the new licensee, utility, and any jointly-owning utility shall, within five business days of such rejection or request, confer and coordinate on ~~amending the~~whether to amend the underlying pole attachment application to the utility and the corresponding permitting and approval applications to the applicable government authority.

(b) Not Required. If no permitting or approval applications are required to be submitted by the utility, then the utility must notify the licensee within ~~ten~~ five business days of the make-ready payment. ~~The make-ready timelines identified in 220 CMR 45.08(5) will begin to toll at the end of that ten-day period~~.

~~(7)~~(5) Make-Ready Notifications and Timelines.

(a) After receipt of payment in full for make-ready cost estimates, ~~entry into a new or amended pole attachment agreement with the new licensee for the attachments identified in its application, and within a commercially reasonable time after the utility receives the necessary permitting and approvals from government authorities in order to commence make-ready,~~ a utility shall issue notifications in writing to the new licensee, and all known entities and existing licensees with

Commented [GNS15]: Applicant may choose to appeal rather than amend.

existing attachments~~, and appropriate government authorities that may be affected by the make-ready in the locations where government authority approvals were obtained. The notices may be staggered based on when the utility receives any necessary government authority approvals in order to commence work on portions of the new licensee's planned deployment project~~.

(b) The make-ready notices provided by the utility shall:

1. identify with specificity the deployment area(s), route(s) and street names, and pole numbers with existing licensees where make-ready needs to be performed;

~~2. if a meet-and-confer was conducted prior to the new licensee's application to the utility, identify the date of the prior meet-and-confer and all individuals and their associated entities that attended the meeting;~~

~~3. include a request to meet-and-confer at least once within 30 days of the date of the make-ready notice for mid-sized orders and within 60 days of the date of the make-ready notice for large and very large orders;~~

~~4. if an existing licensee must modify or shift its attachments to accommodate the new licensee, explain that the new licensee is responsible for the cost of that make-ready for the existing licensee;~~

~~5.~~2. if an existing licensee must modify or shift its attachments to accommodate the new license in the communications space, explain that the existing licensee may allow the new licensee to perform necessary make-ready to the existing licensee's facilities by submitting written approval to the new licensee and any utilities that own the affected poles within ten business days of the make-ready notice;

~~6.~~3. remind existing licensees that they must update ~~NJUNS (or any successor database)~~the Electronic Notification Software System within five business days of completing any make-ready on the poles identified for make-ready;

~~7.~~4. for areas requiring ~~only simple~~ make-ready in the communications space:

(1) set a date for sequential completion of make-ready for all existing licensees in the communications space from the top down that is

Commented [GNS16]: This conforms to the FCC rules.

no later than 30 days after receipt of the make-ready estate payment ~~government authority approvals for poles identified in small and regular orders originally submitted by the new licensee~~, 75 days after receipt of the make-ready estate payment ~~government authority approvals~~ for poles identified in mid-sized orders originally submitted by the new licensee, or 120 days after receipt of the make-ready estate payment ~~government authority approvals~~ for poles identified in large orders originally submitted by the new licensee; and

(2) explain that if make-ready is not completed by the completion date set by the utility ~~and the existing licensee has not provided prior approval~~, the new licensee may automatically hire a contractor from the appropriate utility's authorized contractor list to complete the make-ready specified in the communications space and consistent with the self-help requirements identified in 220 CMR 45.08(6);

~~8.~~5. for areas requiring ~~complex~~ make-ready above the communications space:

Commented [GNS17]: Conformed to FCC rules.

(1) identify with specificity the utility's planned make-ready schedule, including the planned sequence and anticipated work dates for the deployment area(s), route(s) and street names, and pole numbers (with associated existing licensees) where make-ready will be performed;

(2) set a date for sequential completion of make-ready from the top down for all existing licensees that is no later than 90 days after ~~receipt of government authority approvals~~the notice for poles identified in small and regular orders originally submitted by the new licensee, 135 days after ~~receipt of government authority approvals~~the notice for poles identified in mid-sized orders originally submitted by the new licensee, or 180 days after ~~receipt of government authority approvals~~the notice for poles identified in large orders originally submitted by the new licensee; and

(3) explain that the utilities and existing licensees may deviate from the timelines consistent with 220 CMR 45.10: Deviation from Timelines.

~~9.~~6. for poles originally identified in very large orders submitted by the new licensee, explain that make-ready by all existing licensees, the utility and jointly-owning utility, and the new licensee must be negotiated, coordinated, and performed in good faith ~~and in consultation with the appropriate government authorities~~;

~~10.~~7. explain that the existing licensee may modify its attachment consistent with the specified make-ready at any time after all licensees higher on the pole have shifted their attachments but no later than date set for completion; and

8. provide contact information for the utility, jointly-owning utility, and new licensee, including the name, telephone number, and e-mail address of each relevant contact to coordinate the make-ready that needs to be performed and share other, relevant information.

~~11.~~9. Utilities shall notify a new attacher as soon as practicable but no later than 15 days after receipt of payment specified in 220 CMR 45.08(3) if the utility knows or reasonably should know that it cannot meet the make-ready deadline. Existing attachers shall notify the utility and a new attacher as soon as practicable but no later than 15 days after receiving notice from the utility pursuant to the requirements of 220 CMR 45.08(5) that the existing attacher knows or reasonably should know that it cannot meet the make-ready deadline. Pursuant to paragraph 220 CMR 45.08(6)(b)(2), a new attacher can elect self-help for the make-ready work that the notifying party cannot do any time after it receives the notice.

~~(c) Meet-and-Confer Requirement.~~

~~1. No later than 30 days after the date of the make-ready notice for mid-sized orders and no later than 60 days after the date of the make-ready notice for large and very large orders, the new licensee, utilities, and existing licensees in the communications space shall meet-and-confer to engage in~~

~~good faith discussions regarding the mechanics and timing of the implementation schedule. Invitations to attend and participate in this meet-and-confer shall be sent as soon as practicable by the utility to each appropriate government authority that received the make-ready notice.~~

~~2. The entities subject to this meet-and-confer requirement shall find a mutually agreeable date and time for the meeting (which can take place in-person, virtually, or by phone) within the timeframe specified in the prior paragraph.~~

~~(8)~~(6) Self-Help Remedies.

(a) Surveys. If a utility fails to complete a survey within the timeline specified in 220 CMR 45.08(2)(f), then a new licensee may conduct the survey in place of the utility by hiring a contractor from the utility's pre-approved contractor list to complete the survey.

1. If the new licensee elects to conduct self-help, it shall notify the utility's single pole administrator ~~and any jointly-owning utility~~ in writing within five business days of its decision to pursue self-help.
2. A new licensee shall permit the affected utility and existing licensees to be present for any field inspection conducted as part of the new licensee's survey.
3. A new licensee shall use commercially reasonable efforts to provide the affected utility and existing licensees with at least three business days' advance notice before conducting any field inspection as part of a survey. The notice shall include the date and time of the survey, a description of the work involved, and the name, telephone number, and e-mail address of the contractor selected by the new licensee.

(b) Make-Ready Estimates. If the utility fails to present an estimate to the new licensee by the date specified in 220 CMR 45.08, then a new licensee may prepare the estimate in accordance with the requirements applicable to utility-prepared estimates. If a new licensee exercise its self-help option ot prepare an estimate for utility review, the new licensee shall (1) wait until the utility's deadline has expired before exercising the self-help remedy; (2) provide notice to the utility

that it is exercising its self-help remedy for an estimate; (3) use an approved contractor to prepare the estimate in accordance with § 1.1412(a) and (b); and (4) allow utilities the ability to review and approve the self-help estimate at the licensee's expense, but expenses must be reasonable and based only on the actual costs incurred by the utility in reviewing the estimate. The new licensee cannot use self-help for estimates of pole replacements. The utility must provide the new attacher with a written decision on the self-help estimate within 14 days of receiving the estimate from the new licensee or before it is withdrawn by the licensee, whichever is later. If the estimate is accepted by the utility, then it is subject to the reconciliation process set forth in 220 CMR 45.08(3).(d) If the estimate is not accepted by the utility, then the utility must detail in writing the reasons for non-acceptance. The new licensee then has the ability to submit a revised estimate to the utility without starting the pole attachment timeline from the beginning.

(c) Make-Ready. If ~~simple or complex~~ make-ready ~~in the communications space~~ is not complete within the timelines specified pursuant to 220 CMR 45.08(5), the utilities and existing licensees have not provided any notice of deviations from the timelines in accordance with 220 CMR 45.10: Utility Poles – Deviation from Timelines,~~the electric utility has completed any necessary make-ready on the pole,~~ and the new licensee has received the requisite authorization(s) to install its attachments along public rights-of-way by the appropriate government authorities, then a new licensee may conduct the make-ready ~~in the communications space~~ in place of the ~~telephone~~ utility and existing telecommunications, cable television, and municipal licensees, as applicable, by hiring a contractor from the ~~telephone~~ utility's pre-approved contractor list to complete the make-ready.

1. If the new licensee elects to conduct the make-ready, it shall notify the ~~telephone~~ affected utility, any jointly-owning ~~electric~~ utility, and the ~~applicable~~ affected existing licensees in writing within five business days of its decision to pursue self-help.

2. A new licensee shall permit the ~~telephone~~ affected utility, any jointly--owning ~~electric~~ utility, and affected existing licensees to be present for any make-ready.
3. A new licensee shall use commercially reasonable efforts to provide the ~~telephone~~ affected utility, any jointly-owning ~~electric~~ utility, and affected existing licensees with at least five days' advance notice of the impending make-ready. The notice shall include the date and time of the make-ready, a description of the work involved, and the name, telephone number, and e-mail address of the contractor selected by the new licensee.
4. During the course of performing self-help, in the event that the contractor selected by the new licensee identifies the need for adjustments to make-ready identified in the survey(s) or unexpected safety violations on particular poles, the new licensee's contractor shall cease make-ready on the affected pole(s) and the new licensee shall immediately notify the ~~utilities~~ affected utility of the changed circumstances from the make-ready plan and ~~utilities'~~ surveys. The new licensee shall propose a modification and the affected utility ~~utilities~~shall have three business days ~~shall~~ to confer and coordinate on resolving the make-ready on the affected pole(s) within a commercially reasonable timeframe or the proposed modification shall be deemed approved.
5. The new licensee shall notify an affected utility or existing licensee immediately if make-ready damages the equipment of a utility or an existing licensee or causes an outage that is reasonably likely to interrupt the service of a utility or existing licensee. Upon receiving notice from the new licensee, the utility or existing licensee may either:
    (1) complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, costs related to loss of service to customers, and other related costs that form the basis of the invoice; or

(2) require the new licensee to fix the damage at its expense immediately following notice from the utility or existing licensee.

6. After completion of make-ready on a particular pole or set of poles on a particular day, a new licensee shall update ~~NJUNS (or any successor database)~~the Electronic Notification Software System within five business days and notify the affected utility and existing licensees within ten business days. Upon receipt of the notice, a utility and existing licensees may notify the new licensee of any damage or code violations caused on their equipment by the make-ready conducted by the new licensee. If the utility or an existing licensee notifies the new licensee of such damage or code violations, then the utility or existing licensee shall provide adequate documentation of the damage or the code violations. The utility or existing licensee may either:

(1) complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage or code violations and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, and other related costs that form the basis of the invoice; or

(2) require the new licensee to fix the damage or code violations at its expense within ten business days following notice from the utility or existing licensee.

~~(9) Self-Help Make-Ready Limitations. A licensee conducting make-ready pursuant to 220 CMR 45.08(6)(b) shall be limited to make-ready in the communications space involving municipal, cable television, and telecommunications provider attachments and shall not include work to replace a pole.~~

(7) Temporary Attachments.

In lieu of exercising its self-help remedies, a licensee may make a temporary attachment, including by (a) placing its cable on the opposite side of the pole from other cables in the communications space where it can do so in compliance with governing safety codes, or (b) using extension arms to clear obstacles, improve alignment, or provide

space that would not otherwise be available without replacing the pole, to the extent the installation of extension arms complies with applicable codes. Any temporary attachments shall be made permanent upon completion of make-ready work.

~~(10)~~(8) New Licensee Obligations.

~~(a)~~

~~A new licensee shall install its new and upgraded attachments identified in its application only after it has received authorization from the applicable authorizedgovernment authorities.~~

(a) A new licensee shall install its new and upgraded attachments within 30 days of notice of completed make-ready for poles originally identified in its applications for small and regular orders, within 45 days of notice of completed make-ready for poles originally identified in its applications for mid-sized orders, and within 60 days of notice of completed make-ready for poles originally identified in its applications for large and very large orders.

~~(b) The new licensee may forfeit its designated space on the utilities' poles to other licensees in the utilities' queue for failure to meet these timelines.~~

~~(c)~~(b) A new licensee shall be responsible for ~~the~~ make-ready costs, including the cost of removing an existing pole, only when the ~~existing pole is replaced with a new pole as part of~~ make-ready work is necessitated solely by the new licensee's application. A licensee shall not be responsible for any portion of make-ready costs resulting in utility betterment. For the purposes of 220 CMR 45.00, a pole replacement is not necessitated solely by a new licensee's application when:

1. A pole replacement is otherwise required by law;
2. The existing pole fails applicable engineering standards, such as those contained in the NESC;
3. A previous or contemporaneous change to a utility's internal construction standards necessitates replacement of an existing pole;
4. The pole is required to be replaced due to road expansion or alternation, property development, in connection with storm hardening, as the result of

grid modernization efforts, or similar government-imposed requirements; ~~or~~

5. The current pole already is on the utility's internal replacement schedule, regardless of when the replacement is scheduled to take place; or

~~5.~~6. If the utility requires a pole replacement for any reason other than as a result of lock of capacity to accommodate a new attachment.~~.~~

In accordance with 220 CMR 45.08(7)(c)(1) – (5), costs may be assigned and recovered from a pole owner, an existing licensee, or an entity other than the new licensee whose application necessitated the replacement of an existing pole.

(9) Post Attachment Timeline.

(a) A new licensee shall notify the affected utility and existing licensees within ten business days after completion of the make-ready on a particular pole or group of poles conducted on the same day. The affected utility and existing licensees shall have 90 days from receipt in which to inspect the make-ready.

(b) The affected utility and existing licensees have 15 business days after completion of their inspection to notify the new licensee of any damage or code violations caused by make-ready conducted by the new licensee on their equipment.

(c) If the utility does not notify the licensee of damage or non-compliant conditions, the attachment is deemed to have been attached in compliance with governing specification and the utility may not later claim that the attachment was unauthorized or non-compliant unless the licensee moves the location of the attachment.

45.09: Utility Poles – OTMR Option – Timelines, Application, Survey, Make-Ready, and Related Requirements for Access

(1) Applicability. The OTMR process identified in 220 CMR 45.09 may only apply if the following conditions are met:

(a) the new licensee seeks to attach telecommunications, including those of advanced telecommunications capabilities, or cable television provider facilities to the communications space of a pole;

~~(b) the application size is categorized as a small, regular, or mid-size order;~~

~~(c)~~(b) the poles identified in the application require only simple make-ready;

~~(d)~~(c) the need for complex make-ready is not identified during the survey process; and

(d) the new licensee expressly elects to proceed with the OTMR process identified in 220 CMR 45.09 in its initial application to the utility or in a subsequently amended application.

A utility may allow licensees to follow the OTMR process for work above the communications space of a pole provided such agreement is documented in writing and conforms to the rules in 220 CMR 45.09.

(2) Application Process.

(a) If no single application process exists between utilities that jointly own poles, within 30 days of the date of these rules become effective, the utilities shall appoint a single pole administrator to process pole attachment applications for both utilities The identification and contact information for the single pole administrator shall be posted on the utility's website in accordance with 220 CMR 45.17. ~~then a~~ A new licensee shall ~~concurrently~~ submit pole attachment applications to the utilities' single pole administrator. ~~to each utility that shares ownership of the poles identified in the application the contact information of each individual from each utility to whom an application(s) to attach to jointly-owned poles was also submitted~~.

(b) If a new licensee anticipates ~~utilizing~~ overlashing facilities to existing licensee or utility communications attachments in connection with the work described in a pole attachment application, then it shall provide documentation of any

Commented [GNS18]: Again, OTMR should be available for any size orders, as it is at the FCC.

overlashing approvals it has received from existing licensees or the utility and comply with the requirements identified in 220 CMR 45.12(3)(a).

(c) A new licensee that elects to proceed under the OTMR process must make this election in writing in its initial attachment application and must identify the simple make-ready on a pole-by-pole basis that it proposes to perform.

(d) A utility shall confirm receipt of an attachment application through a written notice provided to the applicant and any utility that jointly owns any poles identified in the application within one business day of receiving the application.

(e) Application Completeness.

1. The utility shall review the new licensee's OTMR attachment application for completeness before reviewing the application on its merits. A new licensee's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master pole attachment agreement or in publicly available written requirements in effect at the time of submission of the application, to make an informed decision on the application.
2. After receipt of a new licensee's application, a utility shall determine within ten business days whether the application is complete and notify the licensee and any utilities that jointly own the poles identified in the application of that decision. As part of its notification, if the utility notifies the new licensee and jointly-owning utilities that the new licensee's attachment application is not complete, then the notifying utility must specify all reasons for finding the application incomplete.
3. Resubmission Process.
    (1) A new licensee may resubmit an application within ten business days after receiving notice that the original submission was incomplete. If the resubmission is not made within ten business days, the utility may treat the resubmission as a new application and notify the new licensee and jointly-owning utilities accordingly. A timely resubmission need only address the deficiencies identified in the utility's notice.

(2) A utility shall determine within ~~1~~5 business days whether the resubmitted application is complete and notify the licensee and jointly-owning utilities of that decision, unless the notifying utility specifies to the new licensee and jointly-owning utilities which deficiencies were not addressed and how the resubmission failed to resolve them.

(3) The new licensee may resubmit its application as many times as it chooses within 60 days of the initial application if in each case the licensee makes a good faith effort to address the deficiencies identified by the utility. For each resubmission, the utility shall have 15 business days to review and respond, as specified above.

(4) A utility may not charge a separate application fee for any resubmissions made in accordance with this process within 60 days of the new licensee's initial application or any additional period necessitated by a deviation in accordance with 220 CMR 45.10.

(f) Survey Process.

1. If the utility deems the OTMR application complete, then within 30 days after this determination, the new licensee shall conduct and submit copies to the utilities of the survey(s) conducted to facilitate review of the application's merits.

(1) To perform the OTMR survey(s), the new licensee shall use a contractor included on the telephone utility's authorized contractor lists ~~maintained by each utility with ownership of the poles~~. If the telephone and electric utility do not include the same contractors on their authorized lists, then the new licensee shall utilize ~~at least one contractor included on the electric utility list and one~~the contractor included on the ~~telephone~~ telephone utility list ~~or added to the utility list~~ in accordance with 220 CMR 45.11: Utility Poles – Contractors for Surveys and Make-Ready.

(2) If the new licensee fails to conduct and submit to the utilities copies of the requisite surveys within 30 business days of its

Commented [GNS19]: Conforms to the FCC rules.

Commented [GNS20]: OTMR is entirely in the communications space. Telephone company contractors are entirely capable of assessing whether work is limited to the communications space and simple. Electric utilities may review reports and oversee work if they choose.

Commented [GNS21]: OTMR is in the communications space. Only one contractor is needed to assess simple work in the communications space. The electric utility has the right to review and reject that contractor's conclusion that work qualifies as simple and also has ultimate control of which contractors perform work on its facilities.

notification of application completeness or any applicable deviation period, then the non-OTMR survey and make-ready requirements outlined in 220 CMR 45.08: Utility Poles – Non-OTMR Option, commencing with the survey estimate requirements identified in 220 CMR 45.08(2)(e), shall apply to the application.

2. The new licensee shall permit the utility and any existing licensees on the affected poles to be present for any field inspection conducted as part of the new licensee's surveys. The new licensee shall use commercially reasonable efforts to provide the utility and affected existing licensees within at least three business days' advance notice of any field inspection conducted as part of a survey and shall provide the date, time, and location of the surveys, and name, telephone number, and e-mail address of the contractor performing the surveys.

(g) Application Review on the Merits. The utility shall coordinate and confer with any jointly-owning utilities to each complete a review on the merits of an application requesting OTMR and respond to the new licensee by either granting or denying an application within 15 business days of receipt of copies of the survey(s) conducted by the new licensee.

1. Denial of access.

(1) Any denial of access shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access, if applicable, for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.

(2) A utility may not deny the new licensee pole access based on a preexisting violation not caused by any prior attachments of the new licensee unless the violation involves a ~~safety issue~~threat of imminent harm to persons or property or impacts the structural integrity of the pole. In any instance where a preexisting violation that involves a threat of imminent harm to persons or property

requires corrective work outside the communications space, the utility shall promptly correct the violation. Where a violation requires work by parties other than the utility, the ~~is identified by the~~ utility~~, it~~ shall update ~~NJUNS~~ the joint utility electronic notification ~~or any successor~~ database on the details of the violation and notify the jointly-owning utility and ~~of the violation. The utility shall also notify the~~ any existing licensee(s) potentially responsible for the violation by identifying the location of the pole, describing the violation, and requesting details from the existing licensee ~~on how and when the violation will be resolved~~whether it caused the violation. ~~In such an instance~~Where a violation involves a threat of imminent harm to persons or property necessitating immediate corrective work, the period of time for a new licensee to resubmit its application shall not begin until the preexisting violation has been resolved. A utility, any jointly-owning utilities, and the new licensee shall negotiate in good faith the timeline for when the violation will be resolved, so that the new licensee may submit a new application.

2. Denial of OTMR.

(1) Within the 15 business day review period of an OTMR survey and application on its merits, a utility may object in writing to the new licensee and any jointly-owning utilities to the designation by the new licensee or its contractor that the required make-ready is simple. If the utility objects to the contractor's determination that the required make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, is made in good faith, and explains how such evidence and information relate to a determination that the required make-ready is not simple.

(2) In the event of a utility denial of an OTMR request, the utility, any jointly-owning utility, and the new licensee shall immediately proceed with the survey, make-ready, and associated timelines identified in 220 CMR 45.08: Utility Poles – Non-OTMR Option to process the application.

(3) Make-Ready.

(a) If the new licensee's attachment application is approved on the merits~~, has entered into final or amended pole attachment agreements with the utilities for the attachments identified in its application, has received the necessary permitting and approvals from government authorities,~~ has provided at least 15 business days' prior written notice of the OTMR to the affected utility and existing licensees, and the utility has not denied the application or objected to the OTMR request, the new licensee may proceed with make-ready and attach its facilities ~~within 30 days of the necessary authorizations~~ using a contractor included on the simple make-ready authorized contractor list of the telephone utility and required pursuant to 220 CMR 45.11: Utility Poles - Contractors for Surveys and Make-Ready.

(b) The prior written notice of OTMR provided pursuant to 45.09(3)(a) shall include the date and time of the OTMR, a description of the work involved, the name, telephone number, and e-mail address of the contractor or employee being used by the new licensee and provide the affected utility and existing licensees with a reasonable opportunity to be present for any make-ready.

(c) The new licensee shall notify an affected utility or existing licensee immediately if the make-ready damages the equipment of a utility or an existing licensee or causes an outage that is reasonably likely to interrupt the service of a utility or existing licensee. Upon receiving notice from the new licensee, the utility or existing licensee may either:

1. complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage,

costs related to loss of service to customers, and other related costs that form the basis of the invoice; or

2. require the new licensee to fix the damage at its expense immediately following notice from the utility or existing licensee.

(d) In performing the OTMR work, if the new licensee or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted on the affected poles, and the determining entity must provide notice within ten business days to the other entity or entities of its determination and the impacted poles. The affected make-ready shall then be governed by 220 CMR 45.08(3)-(5) and the utility shall provide the notice required by 220 CMR 45.08(5) as soon as reasonably practicable.

(e) A new licensee shall conduct its approved OTMR within 30 days of the utilities' approvals of the licensee's application(s) on the merits. The new licensee may forfeit its designated space on the utilities' poles to other licensees in the utilities' queue for failure to meet this timeline.

(4) Post-Make-Ready Timelines.

(a) A new licensee shall notify the affected utility and existing licensees within ten business days after completion of the make-ready on a particular pole or group of poles conducted on the same day. The affected utility and existing licensees shall have ~~at least~~ 90 days from receipt in which to inspect the make-ready.

(b) The affected utility and existing licensees have 15 business days after completion of their inspection to notify the new licensee of any damage or code violations caused by make-ready conducted by the new licensee on their equipment. If the utility or an existing licensee notifies the new licensee of such damage or code violations, then the utility or existing licensee shall provide adequate documentation of the damage or the code violations. The utility or existing licensee may either:

1. complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage or code violations and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas

mileage, costs related to any loss of service to customers, and other related costs that form the basis of the invoice; or

2. require the new licensee to fix the damage or code violations at its expense within 15 business days following notice from the utility or existing licensee.

(c) If the utility does not notify the licensee of damage or non-compliant conditions, the attachment is deemed to have been attached in compliance with governing specification and the utility may not later claim that the attachment was unauthorized or non-compliant unless the licensee moves the location of the attachment.

45.10: Utility Poles – Deviation from Timelines

(1) Utility Make-Ready.

(a) A utility may deviate from the time limits specified in 220 CMR 45.08: Utility Poles – Non-OTMR Option during performance of make-ready for good cause that renders it infeasible for the utility to complete the make-ready within the specified time limits. Good cause shall include, but is not limited to: (1) repair work required to restore service following a widespread service outage; (2) major weather or emergency events that require federal disaster relief ~~trigger the utility's emergency response plan~~; (3) unplanned and unannounced roadway or traffic moratoriums implemented by a government authority; ~~(4) availability of police details or flaggers as required by a government authority;~~ and (5) pending issuance of lawfully required permits or approvals by a government authority except where the utility failed to timely request such permits or approvals.

(b) A utility that deviates from the time limits specified in 220 CMR 45.08: Utility Poles – Non-OTMR Option shall notify as soon as practicable, in writing, the new licensee, all affected existing licensees, and, if applicable, appropriate government authorities of the deviation. This notification shall identify the affected poles, include a detailed explanation of the reason for the deviation, and provide a new completion date. A utility shall provide updated notifications to new licensees, all affected existing licensees, and, if applicable, appropriate government authorities at least every 30 days for as long as the deviation persists. In addition to the information included in the initial notification, each updated notification shall include a detailed description of any efforts taken to ameliorate the cause of the deviation and any make-ready that was completed in the preceding 30 days.

(c) The utility shall deviate from the make-ready time limits specified in 220 CMR 45.08: Utility Poles – Non-OTMR Option for a period no longer than necessary to complete make-ready on the affected poles, but in no case longer than 90 days, and shall resume make-ready without discrimination when it returns to routine operations and is able to proceed with the work. A utility may not delay completion of make-ready because of a pre-existing violation on an affected pole not caused by the new licensee.

(2) Existing Licensee Complex Make-Ready.

(a) An existing licensee may deviate from the time limits specified in 220 CMR 45.08(5)(b)(8)(2) during performance of complex make-ready for reasons of ~~utility delays,~~ delays caused by other licensees required to move their attachments before the existing licensee, or safety or service interruptions that render it infeasible for the existing licensee to complete the complex make-ready within the specified time limits. An existing licensee that deviates for safety or service interruptions shall as soon as practicable notify, in writing, the utilities, new licensee, other affected existing licensees, and, if applicable, appropriate government authorities, and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in 220 CMR 45.08(5)(b)(8)(2) is provided by the utility for small and regular orders, up to 105 days in the case of mid-sized orders, up to 150 days for large orders, or up to a certain number of days agreed to in coordination with the utilities and new licensee for very large orders.

(b) The existing licensee shall deviate from the time limits specified in 220 CMR 45.08(5)(b)(8)(2) for a period no longer than necessary to complete make-ready on the affected poles.

(3) New Licensee Deviation for Attachments and Submissions.

(a) A new licensee may deviate from the time limits specified in 220 CMR 45.08 for good cause that renders it infeasible for it to attach within the specified time limits. Good cause shall include, but is not limited to: (1) repair work required to restore service following a widespread service outage; (2) major weather or emergency events that trigger the licensee's emergency response plan; (3) roadway or traffic moratoriums implemented by a government authority; (4) availability of police details or flaggers as required by a government authority; and (5) pending issuance of permits or approvals by a government authority.

(b) A new licensee may deviate from the time limits specified in 220 CMR 45.09(e) for good cause that renders it infeasible to complete OTMR and attach in 30 days. Good cause shall include, but it is not limited to: : (1) repair work required to

restore service following a widespread service outage; (2) major weather or emergency events that trigger the licensee's emergency response plan; (3) roadway or traffic moratoriums implemented by a government authority; (4) availability of police details or flaggers as required by a government authority; and (5) pending issuance of permits or approvals by a government authority

45.11: Utility Poles – Contractors for Surveys and Make-Ready

(1) Authorized Contractor Lists Maintained by Utilities. Each utility shall maintain a reasonably sufficient list of contractors it authorizes to conduct surveys related to the poles it solely or jointly owns, and each telephone utility shall also maintain a reasonably sufficient list of contractors it authorizes to conduct simple make-ready and complex make-ready in the communications space ~~related to~~on the poles it solely or jointly owns.

(2) Licensee Selection of Authorized Contractors. When selecting a contractor for a self-help survey or make-ready in accordance with 220 CMR 45.08(6) or OTMR in accordance with 220 CMR 45.09: Utility Poles – OTMR Option, a licensee shall choose a contractor on the relevant list~~, as applicable,~~ of each utility with ownership of the affected pole(s), if applicable, as of the date the licensee sends notice of its intent to use the contractor.

(3) Licensee Requests to Add Contractors to the ~~Telephone~~ Utility Authorized Contractor Lists. New and existing licensees may request the addition to the ~~telephone~~ utility survey and make-ready lists of any contractor that meets the minimum qualifications identified in 220 CMR 45.11(4). Such a request shall be made in writing to the telephone utility for contractors having only communications work expertise and to the electric utility for qualified electrical contractors and include a certification that the contractor meets the minimum qualifications, as well as the name, telephone number, and e-mail address of the contractor. When such requests are made related to anticipated work on poles that are jointly-owned, the licensee shall submit notification of the request ~~concurrently to the jointly-owning electric utility~~single pole administrator.

(a) The telephone utility shall provide notice to the licensee of its acceptance or rejection of the licensee's request within ten business days of the utility's receipt of the request.

(b) The electric utility shall provide notice to the license of its acceptance or rejection of the licensee's request within thirty days of the utility's receipt of the request.

~~(a)~~(c) If a utility fails to provide the response required by paragraph (3)(a) of this section within 30 days of receipt of an attacher's request, the contractor proposed by the attacher will be deemed approved to perform self-help surveys, estimates, and make-ready work on the utility's poles, and must be added to the utility's

approved list of contractors following the successful completion of any reasonable steps to begin work established by the utility.

~~(b)~~(d) ~~The telephone~~A utility may reject a request made by a licensee to add a contractor to any of the utility's ~~pre~~authorized contractor lists, provided, however, that the grounds for such a rejection shall be limited to reasonable safety or reliability concerns related to the contractor's ability to meet the minimum qualifications or the utility's publicly available and commercially reasonable safety or reliability standards. Notice of a contractor rejection shall be specific, include all relevant information supporting its rejection, and explain how such information relates to the contractor's failure to meet the minimum qualifications or to meet the utility's publicly available and commercially reasonable safety or reliability standards. A notice of contractor rejection shall also identify at least one available, qualified contractor.

(4) Contractor Minimum Qualification Requirements. For purposes of 220 CMR 45.00, ~~telephone~~ utilities, new licensee applicants, and existing licensees shall ensure that the contractors they select to perform surveys or to perform make-ready in the ~~communications space~~ provide written confirmation that the contractors meet the following minimum requirements prior to conducting any work:

(a) the contractor has agreed to follow and is experienced with the published safety and operational guidelines of the ~~telephone~~ utility~~, the jointly-owning electric utility~~, and the NESC;

(b) the contractor has acknowledged that it knows how to read and follow, and is experienced with reading and following the licensed-engineered pole designs for make-ready, if required by the utility;

(c) the contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under OSHA ~~requirements~~rules;

(d) the contractor has agreed to meet~~s~~ or exceed~~s~~ any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available;

(e) the contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on poles,

facilities, and attachments owned by the utilities and existing licensees, and for potential damages caused by the contractor to the poles, facilities, and attachments; and

(f) the contractor is licensed and authorized to work in Massachusetts.

45.12: Utility Poles – Overlashing Wires in the Communications Space

(1) Applicability. The overlashing requirements and limitations identified in 220 CMR 45.12 shall only apply to the overlashing of wires or cables in the communications space by licensees for the transmission of intelligence by telegraph, wireless communication, telephone, television, including cable television, and other means of telecommunications, including those of advanced telecommunications capabilities.

(2) Prior Approval for Overlashing.

(a) A utility shall not require prior approval by the utility for an existing licensee to overlash to the existing licensee's own existing wires on a pole.

(b) A new licensee shall obtain, on a pole-by-pole basis, the specific, written permission of an existing licensee to overlash to the existing licensee's wires.

(3) Licensee Duties.

(a) In its initial pole attachment application to a utility submitted pursuant to 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option, a new licensee seeking to overlash facilities of an existing licensee or utility shall provide documentation of any required approvals obtained from such existing licensees or utility.

1. The overlashing approvals ~~provided in the application~~ shall ~~be provided on the existing attacher's letterhead,~~ identify with specificity the wires and poles on which overlashing is allowed, and identify a contact name, telephone number, and e-mail address of the individual or team responsible for the approval.

2. For purposes of inputs into ~~NJUNS~~ the joint utility electronic notification ~~and any successor~~ databases, as well as future work to be performed on the poles and associated attachments proposed to be overlashed by the new licensee, the overlashing approvals from the existing licensees or utility shall identify whether the new or existing licensee or utility will be responsible for shifting the overlashed wires upon any future request by the utility or other licensees.

(b) A licensee that engages in overlashing is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices.

~~(c) A licensee may not overlash to the lowest telephone utility lines on a pole.~~

~~(d)~~(c) If damage to a pole or other existing attachment results from the licensee's overlashing, or overlashing work causes safety or engineering standard violations, then the overlashing licensee shall be responsible at its expense for any necessary repairs.

~~(e)~~(d) A licensee that engages in overlashing shall not obscure identification tags on existing attachments. If an overlashing licensee obscures the identification tags of another licensee, the overlashing licensee shall be responsible at its expense for new identification tags to be affixed to the wires where the other licensee's tags were obscured.

(4) Preexisting Violations.

(a) A utility may not prevent an existing licensee from overlashing because another existing licensee has not fixed a preexisting violation and may not require an existing licensee ~~that~~ overlash~~es~~ing its existing wires on a pole to fix preexisting violations caused by another existing licensee.

(b) A utility may not require an new licensee ~~prohibit~~ overlashing to an existing licensee's or a utility's wires by a new ~~licensee on a pole-by-pole basis if the existing wires have~~to correct preexisting violations caused by another licensee.

(5) ~~that cannot be resolved during the make-ready process.~~Opportunity to Modify Proposal. Consistent with the requirements of 220 CMR 45.08(2)(b) and 220 CMR 45.09(2)(b), if after receiving copies of overlashing approvals in the new licensee's initial application, and after any surveys have been conducted pursuant to 220 CMR 45.08(2)(f), 220 CMR 45.08(6)(a), or 220 CMR 45.09(2)(f), the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, the utility must provide specific documentation of the issue to the new licensee in order to provide the new licensee with an opportunity to modify the scope of work proposed in its application. A new licensee shall submit within 15 business days to the utility and any jointly-owning

utility a revised application that modifies the proposed scope of work. The utility shall review and respond to the revised application in accordance with the timelines identified in 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option, as applicable, for review of an application on its merits.

(6) Post-Overlashing Review. An overlashing licensee shall notify the affected utility and existing licensee(s) within 15 business days of completion of the overlash on a particular pole or group of poles conducted on the same day. The notice shall provide the affected utility and existing licensee(s) ~~at least~~ 90 days from receipt in which to inspect the overlash. The utility and existing licensees(s) each have 15 ~~business~~ days after completion of its inspection to notify the overlashing party of any damage or code violations to its equipment caused by the overlash. If the affected utility choose to perform an inspection, the cost of the inspection will be paid by the affected utility. If the utility or any existing licensee(s) discovers damage or code violations caused by the overlash on equipment belonging to the utility or the existing license the utility or existing licensee shall inform the overlashing party and provide adequate documentation of the damage or code violations. ~~Depending on the owner of the facility damaged, the utility or~~ The existing licensee may either:

(a) complete any necessary remedial work and bill the overlashing licensee with an itemized invoice of the costs ~~related to~~of fixing the damage ~~and~~ or code violation with documentation ~~that is sufficient to determine~~identify the specific code violation and basis of all charges, including but not limited to the ~~any material, internal and external labor costs, gas mileage,~~ costs ~~related to loss~~ of labor and transportation~~service to customers, and other related costs that form the basis of the invoice~~; or

(b) notify the overlashing licensee of the specific code violations and require the overlashing licensee to fix the damage or code violations at its expense within 15 ~~business~~ days following notice from the utility.

45.13: Utility Poles – Terms and Conditions Presumed Reasonable

The provisions established in 220 CMR 45.04: Duties of Licensees and Attachment Owners through 220 CMR 45.12: Overlashing Wires in the Communications Space are presumed to be reasonable terms and conditions for non-discriminatory pole access on public rights-of-way in Massachusetts. A utility shall not establish rates, terms or conditions related to attachment applications or attachment agreements which conflict with applicable state laws or these regulations. These regulations shall apply to all agreements, contracts, tariffs, and other arrangements between entities covered by these regulations, including those entered into prior to the effective date of these regulations. To the extent any such agreement conflicts with these regulations, the regulations shall control and the conflicting provisions shall be deemed void and of no force or effect.

45.14: Petitions for Interim Relief and Alternative Dispute Resolution Procedure

(1) Petition for Interim Relief. In conjunction with the formal complaint procedure outlined in 220 CMR 45.15: Formal Complaint Procedure, a licensee may file with the Department a Petition for Interim Relief of the action proposed (a) in a notice received pursuant to 220 CMR 45.05(4)(a) within 15 business days of receipt of such notice or (b) to address a denial of access that is impeding or delaying broadband deployment. Such a filing will not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm ~~and likely cessation of the licensee's service to its customers, a copy of the notice~~, and certification of service as required by 207 CMR 1.00: Procedural Rules and 220 CMR 1.00: Procedural Rules. The named respondent may file an answer within seven days of the date on which the Petition for Interim Relief was filed. No further filings with respect to this petition will be considered unless requested or authorized by the Department and no extensions of time will be granted with respect to this petition unless allowed pursuant to 207 CMR 1.02(5) and 220 CMR 1.02(5). The Department shall adjudicate the petition within 30 days of receipt.

(2) Alternative Dispute Resolution. Within 30 days of the rules becoming effective, the Department of Public Utilities and the Department of Telecommunications and Cable shall adopt an expedited informal process to help in resolving complaints of utility practices alleged to be impeding or delaying broadband deployment. Such processes shall allow for the Department to provide guidance and advice to the parties on the most effective means of resolving their dispute, including Department supervised mediation. Prior to the filing of a formal complaint pursuant to 220 CMR 45.15: Formal Complaint Procedure, a utility or a licensee may first pursue an informal, alternative dispute resolution consistent with: (1) any contractual terms entered into by the involved parties; or (2) ~~any~~ the informal process established by the Department of Public Utilities ~~and~~ or the Department of Telecommunications and Cable and outlined in any Memorandum of Agreement between the two agencies.

45.15: Formal Complaint Procedure

(1)

Upon receipt of ~~The Department of Public Utilities and the Department of Telecommunications and Cable will jointly adjudicate~~ any formal complaint filed in accordance with 220 CMR 45.15, the Department of Public Utilities and the Department of Telecommunications and Cable shall assign one agency to adjudicate the complaint. The other agency may participate in the proceeding as an interested party but shall have no final decision making authority concerning the relief requested in the formal complaint. ~~:~~ Formal Complaint Procedure. ~~Each~~ The adjudicating agency will assign a ~~separate~~ docket number to the filing, and any procedural requirements, rulings, and orders will be ~~jointly~~ issued by ~~both agencies~~the adjudicating agency. In issuing any rulings or orders in a formal complaint proceeding, the Department shall consider the interests of both consumers of utility services and subscribers of telecommunications and cable television services.

(2) Complaint.

(a) A petition with supporting documentation submitted concurrently to the Department of Public Utilities and Department of Telecommunications and Cable by either a utility or licensee alleging a dispute under M.G.L. c. 166, § 25A, 220 CMR 45.00, or otherwise involving allegations of discriminatory access or an unjust or unreasonable rate, term, or condition will commence a formal complaint proceeding under 220 CMR 45.15: Formal Complaint Procedure. Complainants may join together to file a joint complaint.

(b) Each complaint shall conform to the requirements specified in 207 CMR 1.04(1)(b) and 220 CMR 1.04(1)(b) and shall be accompanied by: (1) a cover letter describing the filing and noting the distribution of copies, and (2) a certification of service on any utility, licensee, or party named as complainant or respondent. The complaint shall also contain supporting information and documentation, with each document individually pre-marked for identification in the upper right-hand corner with the docket number(s), exhibit name limited to 20 characters, date of filing with the Department, page number, and total number of

pages in the document. The supporting documentation shall include the following, as applicable:

1. a copy of the attachment agreement, if any, between the licensee and the utility, and if no attachment agreement exists, the complaint shall contain:
    (1) a statement that the utility uses or controls, in whole or in part, those poles, ducts, conduits, or rights-of-way at issue which are used or designated for attachments; and
    (2) a statement that the licensee currently has attachments on the utility's poles, ducts, conduits, or rights-of-way or has requested that attachments be placed on the utility's poles, ducts, conduits, or rights-of-way;
2. in any complaint where it is claimed that a term or condition is unjust or unreasonable, the complaint shall identify the specific term or condition that is claimed to be unjust or unreasonable, and provide all information and arguments relied upon to justify said claim;
3. in any complaint where it is claimed that a rate is unjust or unreasonable, or that a term or condition requires review of the associated rate, the data, information, and arguments in support of said claim shall include, but not be limited to, the following, where applicable and available to the complainant:
    (1) analysis and discussion addressing why the specific rate is claimed to be unjust or unreasonable;
    (2) the gross investment by the utility for the pole lines;
    (3) the investment by the utility in appurtenances not used by or useful to the licensee. This may be expressed as a percentage of the gross pole investment, and shall include a list of specific appurtenances considered not used or useful;
    (4) the depreciation reserve for the gross pole line investment;
    (5) the total number of poles (A) owned; and (B) controlled or used by the utility;
    (6) the total number of poles which are the subject of the complaint;

(7) the annual carrying charges attributable to the cost of owning a pole, and the specific factors used in the determination of these charges. Annual carrying charges may be expressed as a percentage of net pole investment;
(8) the average amount of useable space per pole for those poles used for pole attachments; and
(9) the reimbursements received from the licensee for non-recurring costs;

Data and information should be based on historical or original cost methodology, to the extent possible. Data should be derived from publicly available reports filed with the Department of Telecommunications and Cable, the Department of Public Utilities, the Federal Communications Commission, the Federal Energy Regulatory Commission, such as the Federal Energy Regulatory Commission's Form No. 1, or other reports filed with state or regulatory agencies. The source of any data shall be identified. Calculations made in connection with these figures should be provided to the complainant upon request, as should the computation of any rate determined by using the formula adopted for calculating reasonable attachments rates in Massachusetts;

4. in any complaint where it is claimed that a complainant has been improperly denied access to a pole, duct, conduit, or right-of-way, owned or controlled, in whole or in part, by one or more utilities, the complaint shall include the data and information necessary to support the claim, including:
   (1) the reasons given for the denial of access to the poles, ducts, conduits, or rights-of-way, owned or controlled, in whole or in part, by one or more utilities;
   (2) the basis for the complainant's claim that the denial of access is improper;
   (3) the remedy sought by the complainant;

(4) a copy of the written request to the utility for access to its poles, ducts, conduits, or rights-of-way; and

(5) a copy of the utility's response to the complainant's written request, including all information given by the utility to support its denial of access. A complaint alleging improper denial of access will not be dismissed if the complainant is unable to obtain a utility's written response;

(6) a statement that the utility and licensee have been unable to agree and a brief summary, including dates, of all steps taken to resolve the problem prior to filing, and if no such steps were taken, the complainant shall state the reason(s) why;

(7) if applicable, any other information and arguments relied upon to argue that a rate, term, or condition is not reasonable; and

(8) a statement that the complainant requests that a hearing be convened pursuant to 207 CMR 1.06: Hearings and 220 CMR 1.06: Hearings or that it waives its right to a formal hearing; and

5. in any complaint brought by a utility against a licensee alleging a dispute under M.G.L. c. 166, § 25A or 220 CMR 45.00, the complaint shall include the data and information necessary to support the claim, including:

(1) analysis and discussion involving the basis for the complainant's claim;

(2) the remedy sought by the complainant;

(3) a statement that the utility and licensee have been unable to agree and a brief summary, including dates, of all steps taken to resolve the problem prior to filing, and if no such steps were taken, the complainant shall state the reason(s) why; and

(4) if applicable, any other information, arguments, and supporting documentation relied upon to support the complaint.

(c) Where the attachments involve ducts, conduits, or rights-of-ways, appropriate data and information, equivalent to that required by 220 CMR 45.15(2)(b), shall be filed.

(d) All factual allegations set forth in the complaint or supporting documentation shall be authenticated by affidavit(s) at the time of filing. Any complaint shall also include any relevant witness testimony in support of the complaint and a summary list of each document, including the associated pre-marked exhibit identifier, submitted with the complaint.

(e) The complainant shall include a statement either that the complainant requests the opportunity for a hearing to be conducted pursuant to M.G.L. c. 30A, § 10, 207 CMR 1.06(6)-(7), and 220 CMR 1.06(5)-(6), or that it waives its right to a formal hearing.

(3) Expedited Dispute Resolution. Disputes alleging that a utility's actions are impeding or delaying deployment of broadband facilities are eligible for resolution using the Accelerated Docket process set forth in 207 CMR 15.00 et seq.. In addition to the information required by 207 CMR 15.03(4), the request for inclusion on the Accelerated Docket must include a detailed explanation of how the utility's action is impeding or delaying deployment of broadband facilities.

~~(3)~~(4) Response.

(a) The response to a formal complaint under 220 CMR 45.15: Formal Complaint Procedure shall be filed with both the Department of Public Utilities and the Department of Telecommunications and Cable, as well as served on the complainant, within ten business days after service of the document to which the response is directed.

(b) The response shall specifically address all contentions made by the complainant. All factual statements shall be supported by affidavit(s).

(c) The response shall include a statement either that the respondent requests the opportunity for a hearing pursuant to M.G.L. c. 30A, § 10, 207 CMR 1.06(6)-(7), and 220 CMR 1.06(5)-(6), or that it waives its right to a formal hearing.

~~(4) Policy Considerations. Within 15 business days of receipt of a response to a complaint, the presiding officers assigned to the complaint by the Department of Public Utilities and the Department of Telecommunications and Cable may make a determination that the allegations raise policy considerations of general applicability which are not presently~~

Commented [GNS22]: The Department's existing complaint process already allows it to address a concern that a complaint seeks a rule change. Notably, whether a rate, term and condition is just and reasonable may require the Department to consider circumstances not expressly addressed in the rules. Keeping this language runs the risk that any time a Department is asked to determine that a rate, term or condition is unjust or unreasonable for any reason not specifically set forth in the rule, it will feel compelled to open a rulemaking. In fact, it is common for regulatory bodies to supplement rules with conclusions reached in adjudicatory proceedings about what is or is not just and reasonable.

~~addressed by these regulations. If such a determination is made, the presiding officers may jointly issue a written recommendation that some, or all, of the complaint be converted into a petition for joint rulemaking pursuant to the Memorandum of Agreement between the Department of Telecommunications and Cable and the Department of Public Utilities. Such a recommendation shall be granted only by a joint order signed by the Commissioner of the Department of Telecommunications and Cable and the Commission of the Department of Public Utilities. During the pendency of any such presiding officer determination or joint agency order on converting a petition into a joint rulemaking, the presiding officers may jointly establish a procedural schedule to commence the adjudication of the underlying complaint.~~

(5) Notice of Complaint, Intervention, and Comments. The Department shall give public notice by such means as it deems appropriate, consistent with due process, that a formal complaint has been filed and docketed. Such notice shall include a brief description of the complaint and shall set a deadline for the filing of petitions to intervene and for the opportunity for comments to be filed by any person permitted to intervene as a party. That time limit for intervention requests shall be no shorter than 14 days after such public notice, and the time limit for comments submitted by intervenors shall be no later than 20 days after issuance of any decision by the Department permitting intervention.

(6) Intervention. The procedures outlined in 207 CMR 1.03: Appearances; Intervention and Participation: Parties and 220 CMR 1.03: Appearances; Intervention and Participation: Parties shall generally apply to petitions to intervene under 220 CMR 45.15: Formal Complaint Procedure.

(7) Presiding Officers and Procedural Schedule. After the receipt of a complaint, to the extent that it is deemed necessary and practicable, the presiding officers shall jointly establish a detailed schedule for the proceeding, including, but not limited to, dates reserved for potential evidentiary hearings or dates for the parties to file information requests and responses, objections to discovery questions and responses to those objections, requests for an evidentiary hearing, testimony, stipulations, settlement proposals, and briefs. The presiding officers shall also jointly address any other procedural matters that will aid in the orderly disposition of the case. The presiding officers may direct the parties to attend a procedural call or procedural conference to

discuss procedural matters relating to the proceeding at any time before the commencement of an evidentiary hearing.

(8) Meetings and Evidentiary Hearings. The Department may decide each complaint upon the filings and information before it, may require one or more informal meetings with the parties to clarify the issues or to consider settlement of the dispute, or may, in its discretion, require a hearing upon any issues.

(9) Department Consideration of Formal Complaint. Where one of the parties has failed to provide information required to be provided by 220 CMR 45.00 or requested by the Department, or where costs, values or amounts are disputed, the Department may estimate such costs, values or amounts it considers reasonable on the basis of available evidence of record, or may decide adversely to a party who has failed to supply requested information which is readily available to it, or both.

(10) Remedies. If the Department finds a violation of M.G.L. c. 166 § 25A or 220 CMR 45.00, it may prescribe a just and reasonable rate, term or condition and may:

(a) terminate the unjust or unreasonable rate, term, or condition;

(b) substitute in the attachment agreement the reasonable rate, term or condition established by the Department; or

(c) order relief the Department finds appropriate under the circumstances.

(11) ~~(11)~~ Time Limit. The Department shall issue a final Order on any formal complaint filed by a new licensee in accordance with 220 CMR 45.00 within 180 days after the complaint is filed, although the deadline may be extended up to 360 days after the complaint is filed by a joint order signed by a designated Commissioner from each Department issued within the initial 180 days provided that the complaint does not allege a denial of access or that the utility's actions are impeding or delaying broadband deployment and provided that any extension is limited to the amount of time necessary to ensure full, fair and prompt adjudication of the dispute. Formal complaints filed by any party other than a new licensee shall not be subject to these time limits.

(12) Appeal from Department Decisions. The Department shall notify all parties of their rights to appeal a final decision of the Department pursuant to M.G.L. c. 25, § 5, and of the time limits on their rights to appeal.

45.16: Rates Charged Any Affiliate, Subsidiary, or Associate Company

A utility that engages in the provision of telecommunications services or cable ~~television~~ services as defined in 47 U.S.C. § 522(6) shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which the utility would be liable under 220 CMR 45.16.

45.17: ~~Annual~~ Informational Filings and Website Postings

(1) In a docket designated by each agency, Utilities shall semi-annually submit ~~an~~ informational filings with both the Department of Public Utilities and the Department of Telecommunications and Cable on or before ~~July~~ April 1 ~~in a docket designated by each agency~~for the prior six-month period of July – December, and on or before October 1 for the prior six-month period January - June.

(a) Content. The informational filings shall, at a minimum, include the following:

1. a cover letter that:
   (1) states the purpose of the filing;
   (2) identifies the designated docket numbers; and
   (3) identifies the name, address, telephone number, and e-mail address of the individual submitting the filing, as well as the name of the entity on behalf of which the filing is being submitted;
   (4) ~~as of December 31 of the preceding calendar year:~~identification of the web address(es) that provides with access to the information required pursuant to 220 CMR 45.17(2).
2. For the applicable six-month period:
   (1) a list of approved survey and, as applicable, make-ready contractors identified in accordance with 220 CMR 45.11: Utility Poles – Contractors for Surveys and Make-Ready, and any changes to the list during that period; and
   (2) a list of the annual sole- and jointly-owned pole, duct, and conduit attachment rates charged by the ~~u~~Utility for telecommunications, wireless, cable television, and, if applicable, EVSE attachments, the Utility's pole application fee(s) and per pole survey fees and Unit Cost schedule of fees for pole related work, and any changes to the rates or fees during that period;
3. for the preceding calendar year through December 31, a spreadsheet that identifies:

(1) the total number of pole attachment applications received, categorized by application size and the total number of poles included in those applications;

(2) ~~a summary breakdown of~~For each application ~~received, categorized~~, grouped by application size, a spreadsheet that identifies:

(a) the date the application was received by the ~~utility;~~Utility and the ~~date on which all work included~~number of poles in the application ~~was~~;

(b) the category of attachments (i.e., wireline telecommunications, wireless telecommunications, cable television, municipal, EVSE and Other) associated with the application;

~~(b)~~(c) the number of poles surveyed and the date(s) on which the Utility (i) completed ~~or is expected to be~~its survey, (ii) completed preparation of any make-ready estimate, and (iii) reached concurrence with a joint-owning Utility on the scope of make ready work;

~~(c)~~(d) ~~the amount of time that elapsed between receipt of the application by the utility and the date~~the dates on which ~~all work included in the application was~~the Utility started and completed make-ready work, if applicable;

~~(d)~~ the ~~total~~ number of poles ~~included in the application;~~

(e) ~~the number of poles surveyed by the utility~~ requiring simple versus complex make-ready;

(f) whether the ~~licensee~~ applicant elected OTMR and whether the ~~utility~~ Utility approved the OTMR; and

~~(g) the number of poles with completed simple versus complex make-ready;~~

~~(h)~~(g) the number of poles requiring replacement and replaced as a result of the request~~, and the number of double poles remaining; and~~;

~~(i)~~(h) the number and type of attachments (i.e., wireline telecommunications, wireless telecommunications, cable television, and municipal) associated with the request; and

~~4. identification of the web address(es) with access to the information required pursuant to 220 CMR 45.17(2).~~

(b) The information submitted in filings pursuant to 220 CMR 45.17(1) will not be considered or treated as confidential or proprietary by the Department.

(2) Website Postings. Each utility shall implement and maintain on its website a dedicated, publicly-accessible page that provides, at a minimum:

(a) Contacts at the utility where Licensees may obtain information concerning access to poles, conduits and rights of way and links to application forms or copies thereof.

~~(a)~~(b) a current list of approved contractors identified in accordance with 220 CMR 45.11: Utility Poles – Contractors for Surveys and Make-Ready;

~~(b)~~(c) a current list of the annual sole- and jointly-owned pole attachment and conduit rates charged by the utility for wireline telecommunications, wireless telecommunications, cable television, ~~and, if applicable, EVSE attachments;~~EVSE attachments if applicable, the application fees for poles and conduit, per pole survey fees and Unit Cost schedule for make ready work.

~~(c)~~(d) a current list of, and links to pole, duct, and conduit attachment agreement templates utilized by the utility, as well as any associated instructional and informational guides~~, if available~~ related to the templates;

~~(d)~~(e) links or details on relevant safety and operational guidelines of the utility applicable to pole attachment and conduit access applications; ~~and~~

(f) appropriate recipient and contact information at the utility for pole attachment and conduit access application submittals and questions, including the identity and contact information for any appointed single pole administrator;

(g) a description of and instructions for using the utility's Electronic Notification Software System ; and

~~(e)~~(h) a current list of, and contact information for, licensees with facilities occupying the utility's poles, ducts or conduit.

45.18: Severability

The provisions of 220 CMR 45.00 shall be deemed severable if any particular provision is rendered invalid by judicial determination or by statutory amendment.

REGULATORY AUTHORITY

220 CMR 45.00; 47 U.S.C. § 224; 47 C.F.R. § 1.1405; M.G.L. c. 25; M.G.L. c. 25C; M.G.L. c. 159; M.G.L. c. 164; and M.G.L. c. 166.

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Exhibit 1

Massachusetts Proposed Rules vs. Other States

Massachusetts Proposed Rules vs. Other States

OTMR:

Nearby states with OTMR: **CT**,[1] **ME**,[2] **NH**,[3] **NY**,[4] **OH**,[5] **PA**,[6] **RI**,[7] **VT**[8]

Nearby States that limit OTMR by application Size: **0**

TIMELINES:

Nearby states with timelines: **CT**, **ME**, **NH**, **NY**, **OH**, **PA**, **RI**, **VT**

Nearby states that pause make-ready timelines for government approvals: **0**

Nearby states that pause make-ready for correction of pre-existing non-compliance: **0**

Nearby states whose attachment rules condition pole access timelines on government authority: **0**

SELF-HELP:

Nearby states with self-help: **CT**, **ME**, **NH**, **NY**, **OH**, **PA**, **RI**, **VT**

Nearby states that allow self-help above communications space: **ME**, **OH**, **PA**, **RI**, **VT, WV**[9]

PROCESS:

Nearby states with accelerated dispute resolution: **ME, OH, PA, RI, WV**

Nearby states that require electronic notification systems for make-ready: **ME**

States with confidentiality protections for attacher information: **CA,**[10] **ME**

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[1] Connecticut's pole attachment rules referenced herein are located in *PURA Investigation of Developments in the Third Party Pole Attachment Process – Make Ready*, Final Decision, Docket 19-01-52RE01, (May 11, 2022); *PURA Investigation of Developments in the Third Party Pole Attachment Process*, Final Decision, Docket No. 19-01-52 (May 19, 2021).

[2] Maine's pole attachment rules referenced herein are located at 65-407 C.M.R. Ch. 880, *et seq.*

[3] New Hampshire's pole attachment rules referenced herein are located at N.H. Code Admin. R. En 1300, *et seq.*

[4] New York adopted One-Touch Make-Ready in *Case 22-M-0101, Proceeding to Review Certain Pole Attachment Rules*, Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings (July 22, 2024).

[5] Ohio pole attachment rules referenced herein are located at Ohio Admin. Code 4901:1-3, *et seq*.

[6] Pennsylvania's pole attachment rules referenced herein are located at 52 Pa. Code § 77, *et seq.*

[7] Rhode Island has not certified that it regulates pole attachments, and is therefore governed by FCC pole attachment rules. *See States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, DA 22-630, (June 13, 2022).

[8] Vermont's pole attachment rules referenced herein are located at Vt. Admin. Code 18-1-8:3.701, *et seq*.

[9] W. Va. Code R. § 150-38-10.

[10] *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, Nos. R.95-04-043, I.95-04-044, Opinion, Decision 98-10-052 (October 22, 1998) at 145-146.

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Exhibit 2

Eversource Pole Attachment Agreement

POLE ATTACHMENT AGREEMENT

DATED FEBRUARY 25, 2021

BETWEEN

NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY
(LICENSOR)

AND

CRC COMMUNICATIONS LLC d/b/a OTELCO
(LICENSEE)

POLE ATTACHMENT AGREEMENT

THIS AGREEMENT, made as of this day, February 25, 2021, between NSTAR ELECTRIC COMPANY, d/b/a Eversource Energy, a Massachusetts corporation, having its principal office at 247 STATION DRIVE, WESTWOOD, MA 02090 (hereinafter called "Licensor") and CRC Communications LLC d/b/a OTELCO having its principal office at 56 Campus Drive, New Gloucester, ME 04260, (hereinafter called "Licensee").

RECITALS:

WHEREAS, Licensee for its own use desires to use, to place and to maintain cables, equipment, and facilities on poles of Licensor, specifically in the State/Commonwealth of Massachusetts served by Licensor; and

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the placement of cables, equipment, and facilities by Licensee on Licensor's poles, subject to the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

ARTICLE I - DEFINITIONS

1.1 Anchor. A facility consisting of an assembly of a rod secured to a fixed object or plate designed to resist the pull of guy strand, or strands.

1.2 Anchor Attachment. A guy strand attached to an anchor solely owned or jointly owned by Licensor or for which Licensor is responsible for authorizing attachments.

1.3 Attachments. Any of Licensee's facilities in direct contact with or supported by a utility pole, and/or any article of equipment attached to a point on a pole not normally occupied by a strand attachment (e.g., power supplies, equipment, cabinets, terminals, etc.). Attachments, for purposes of this Agreement, shall not include any antenna or related equipment used for wireless telecommunication services. For billing purposes an Attachment is counted for each guy strand and cable supported by a through-bolt and for each article of equipment attached to a Utility Pole.

1.4 Attachment Fee. A specified amount revised periodically, billed semi-annually or annually to the Licensee.

1.5 Guy Strand. A metal cable of high tensile strength which is attached to a pole and anchor or another pole for the purpose of reducing pole stress.

1.6 Joint Owner. A person, corporation or other legal entity having an ownership interest in a pole.

1.7 Joint User. A party to whom the use of the pole or anchor has been extended by the owner of the facility. The term "Joint User" shall not include Licensees.

1.8 Licensee's Facilities. The cable and all associated hardware owned by the Licensee.

1.9 Licensee's Maintenance Work. Work performed by Licensee on its facilities and attachments for repair, replacement and daily servicing of its Facilities, not associated with any significant overlash or rebuild project.

1.10 Make-ready Work. All work, including, but not limited to, rearrangement and/or transfer of existing facilities, replacement of a pole, trimming of vegetation or any other changes required to accommodate the attachment of Licensee's Facilities to a pole.

1.11 Overlash. The act of attaching any single strand, hardware, cable, wires and/or apparatus owned by Licensee to same Licensee's existing strand, hardware, cable, wires and/or apparatus.

1.12 Periodic Inspection. Licensor's inspection of Licensee's facilities performed to determine that attachments are authorized and are maintained in conformance with the required specifications in Article VI of this Agreement

1.13 Pre-construction Survey. There are two elements of the Pre-construction Survey: 1.) field inspection of the existing pole facilities to determine any necessary Make-ready Work, and 2.) engineering and administrative effort required to process the application and to prepare the charges for Make-ready Work, if applicable.

1.14 Post-construction Inspection. Inspection performed to measure and/or to visually observe Licensee's Facilities during or shortly after completion of construction, to ensure the attachment and the installation of the Licensee's Facilities conform to the standards required by this Agreement.

1.15 Rebuild. Work other than Licensee's Maintenance Work performed by Licensee to replace, add to or alter its existing attachments or facilities attached to Licensor's poles.

1.16 Service Center Area. A geographical area assigned to an NSTAR Electric representative.

1.17 Subsequent Inspections. Inspections performed to confirm the correction of non-conforming conditions, which were observed during Periodic or Post-Construction Inspections.

1.18 Suspension Strand (Messenger). A metal cable of high tensile strength attached to a pole and used to support facilities.

1.19 Utility Pole. A pole solely owned, jointly owned, or jointly used by the Licensor and used to support its facilities and/or the facilities of an authorized Licensee.

ARTICLE II – SCOPE OF AGREEMENT

2.1 Subject to the provisions of this Agreement, Licensor agrees to issue to Licensee for any lawful purpose, revocable, non-exclusive licenses authorizing the attachment of Licensee's Facilities to Licensor's poles. This Agreement governs the fees, charges, terms and conditions under which Licensor will issue such licenses to Licensee. Licensee must obtain separate authorization from, and pay all applicable Fees and Charges to, each licensor and any Joint Owner or Joint User of any Utility Pole. This Agreement is not in and of itself a license, and before making any attachment to any Utility Pole, Licensee must apply for and obtain a license for specifically identified Utility Poles.

2.2 This Agreement supersedes all previous aerial agreements between Licensor and Licensee with respect to the subject matter contained herein. This Agreement shall govern all existing licenses between Licensee and Licensor as well as all licenses issued subsequent to execution of this Agreement.

2.3 No use, however extended, of Licensor's poles, or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such poles. Licensee's rights herein shall be and remain a license, subject to the terms of this Agreement.

2.4 Nothing contained in this Agreement shall be construed to require Licensor to construct, retain, extend, place, or maintain any pole or other facilities not needed for Licensor's own service requirements.

2.5 Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Licensor entering into agreements with other parties regarding the poles covered by this Agreement. The rights of the Licensee hereunder shall at all times be subject to any existing agreement(s) or arrangement(s) between Licensor and any Joint Owner(s) of Licensor's poles, to the extent applicable.

2.6 Nothing contained in this Agreement shall be construed to require Licensor to grant a license where Licensor believes that placement of Licensee's Facilities would interfere with Licensor's existing or reasonably foreseeable service requirements, or the existing use of Licensor's facilities by other parties or create a hazardous or unsafe condition.

2.7 Licensor makes no representation or warranty, express or implied, as to the present or future strength, condition or state of repair of any poles, wires, hardware, equipment or apparatus. Licensor hereby disclaims any and all express or implied warranties or guarantees regarding Licensor's facilities, engineering, workmanship, or rights of way, including, without limitation ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Any use of Licensor's facilities by Licensee, its agents and contractors and their respective employees shall be at the sole risk of Licensee, its agents and contractors.

2.8 Licensee acknowledges that Licensee's ability (and Licensor's consent hereunder) to perform the work of installing and maintaining Licensee's Attachments through Licensee's contractors may be contested or challenged. Licensor shall have no liability to Licensee hereunder if a court, governmental agency or arbitral body makes an adverse ruling on this issue. Licensee shall indemnify, defend and hold harmless Licensor from and against any claims, costs, fees or liability whatsoever (including any retroactive pay or similar award) incurred by Licensor as a result of any contest or challenge to Licensee's performance of the work in question, any adverse determination or Licensee's failure to abide by any such adverse determination, or Licensee's challenge thereof by appropriate proceedings. The prosecution of any appeal from any such adverse determination shall be at the sole discretion of Licensor; and shall also be subject to the foregoing indemnity and hold harmless provisions.

ARTICLE III – FEES AND CHARGES

3.1 General

3.1.1 Licensee agrees to pay to Licensor the applicable Attachment Fees and Charges as specified in and in accordance with the terms and conditions of subpart 3.2 of this Agreement and of APPENDIX I, attached hereto and made a part hereof.

3.1.2 The Licensor may change the amount of Attachment Fees and Charges specified in APPENDIX I by giving the Licensee not less than sixty (60) days written notice prior to the date the change is to become effective. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such sixty (60) day notice period if the change in Fees and Charges is not acceptable to Licensee.

In order to terminate in this circumstance, the Licensee must give Licensor written notice of its election to terminate this Agreement at least thirty (30) days prior to the end of such sixty (60) day notice period, or such other period as the parties may agree in writing. Licensee shall thereafter remove its Facilities and Attachments in accordance with the process set forth in Article X, subpart 10.3 of this Agreement.

3.1.3 Changes in the amount of Attachment Fees and Charges specified in APPENDIX I shall become effective on the date specified by Licensor, subject to the sixty (60) day advance written notice. The changes shall be presumed acceptable unless at least thirty (30) days prior to the end of the sixty (60) day notice period Licensee advises Licensor in writing that the changes are unacceptable and, in addition, submits the issue to the regulatory body asserting jurisdiction over this Agreement for decision. Licensee shall pay the existing Attachment Fees and Charges during the time that the issue is being reviewed by said regulatory body, subject to true-up based on the final determination of rates by said regulatory body, plus any interest prescribed by said regulatory body.

3.1.4 Licensor shall provide licensee with an updated APPENDIX I following the effective date of the new Attachment Fees and Charges.

3.2 Attachment Fees

3.2.1 Licensees shall pay an Attachment Fee for each attachment made to Licensor's Utility Poles. For the purpose of computing the Attachment Fees due hereunder, the Fee shall be based upon the number of Attachments for which licenses have been issued under this Agreement,

subject to Licensor's rights of inspection and audit provided in this Agreement.

3.2.2 Attachment Fees are calculated from the first day of the month following the date a license is issued. Fees shall be payable semi-annually or annually in advance, unless otherwise provided. Payment is due within the later of thirty (30) days from the first day of January and the first day of July, or thirty (30) days from the date the bill is issued.

3.3 Pre-construction Survey, Make-ready Work and Inspection Charges

3.3.1 Licensee shall calculate and pay to Licensor the applicable Pre-construction Survey Charge with its License Application. The License Application forms are set forth in APPENDIX IV, attached hereto and made a part hereof. The Pre-construction Survey Charge shall be calculated based on the rates and formulas set forth in APPENDIX I.

3.3.2 Licensee shall make an advance payment of the applicable Charges to Licensor prior to any performance by Licensor of any Pre-construction Survey, Make-ready Work, Post-construction Inspection or Subsequent Inspection. Charges will be based on an estimate of charges. For any Charges based on an estimate, the Licensee shall be credited for any amount paid in excess of the Licensor's estimated Charges, or shall be billed for any amount in addition to Licensor's estimated Charges, as compared to the actual Charges as finally computed.

3.3.3 Licensee shall make payment to the Licensor within thirty (30) days following the invoice date for Periodic Inspections according to subpart 3.3.4 of this Agreement.

3.3.4 Pre-construction Survey, Make-ready Work, and Inspection (Post-construction Inspection, Periodic Inspection and Subsequent Inspection) All charges for Pre-Construction Survey, Inspections, Make-ready Work, removal of Licensee's facilities from Licensor's poles and any other work performed for Licensee shall be based upon the full cost and expense to Licensor of such work or for having such work performed by an authorized representative. Any federal, state or local taxes incurred on Licensor's receipt of these costs from Licensee will be added to Licensee's cost on a grossed up-basis.

3.4 Payment Requirements

3.4.1 For any bill rendered by Licensor to Licensee hereunder, except where advance payment is required, payment is due within thirty (30) days from the date of the bill. Late payment of any bill is subject to a late fee of 1.5% per month applied to the outstanding balance from the due date of the bill. Licensor, at its sole discretion, may change this late fee from time to time during the term of this Agreement to reflect prevailing market conditions.

3.4.2 Non-payment of any amount due hereunder shall constitute a default of this Agreement, and subject this Agreement to termination under the provisions of Article X.

3.4.3 For any bill rendered by Licensor to Licensee for advance payment of Pre-construction Survey Charges or Make-ready Work Charges, hereunder, payment shall be made within thirty (30) days of the bill date. If such advance payment is not received within thirty (30) days, Licensor shall have the right to issue a letter of cancellation no sooner than fifteen (15) days thereafter, which will cancel the Licensee's application for the license. Thereafter, if Licensee wishes to proceed, Licensee shall be required to submit a new application for a license, as if it had never submitted the initial application.

3.5 Billing Disputes

3.5.1 Where Licensee in good faith disputes a bill or invoice rendered by Licensor, Licensee shall make payment of all portions of said bill or invoice not in dispute as provided in Article III. Where the cumulative amount of all of Licensee's bills or portions(s) of bills in dispute is in excess of $10,000.00, Licensee shall deposit said cumulative disputed amounts in an interest-bearing escrow account until such time as the disputes are resolved. The disputed amount deposited together with the proportional interest, shall be distributed immediately to Licensor and/or Licensee in accordance with and upon resolution of the dispute. Where the cumulative amount of all of Licensee's bills or portions of bills in dispute are less than or equal to $10,000.00, Licensee shall make payment to Licensor and shall be rebated an appropriate amount (including interest computed at the prime rate at a bank mutually agreed to by the parties) based on the resolution of the dispute.

3.5.2 Where Licensee fails to pay an amount due and owing under this Agreement (including amounts in dispute that are less than or equal to $10,000) or fails to establish an escrow account for disputed amounts more than $10,000, or fails to invoke the dispute-resolution procedures set forth in subpart 15.10 of this Agreement within six (6) months of the establishment of amounts disputed in good faith, in addition to all other remedies available to Licensor including termination under provisions of Article X of this Agreement, Licensor may refuse to perform any Survey, Inspection or Make-ready Work for Licensee and may refuse to issue any license to Licensee until such time as the amount is paid or is deposited in an escrow account.

3.5.3 Notwithstanding any other provision of the Agreement, failure of Licensor to provide an annual bill for License Fees shall not excuse Licensee's obligation to make payment for License Fees as and when due.

3.5.4 If the presence of the Licensee on Licensor's poles causes Licensor to be liable for the payment of any new or additional tax, fee, charge or imposition by any governmental authority, which the Licensor would not otherwise be obligated to pay, then Licensee shall reimburse Licensor to the full extent of any such new or additional tax, fee, charge or imposition, upon demand and submittal of a bill therefore by Licensor.

ARTICLE IV - APPLICATION FOR AND ISSUANCE OF LICENSES

4.1 Before Licensee makes an Attachment to any pole, Licensee shall make application for and have received a license therefor in the forms attached in APPENDIX IV. Licensor may update these forms from time to time during the term of the Agreement and agrees to provide Licensee prompt notice of such update.

4.2 Licensee agrees to limit the filing of applications for pole attachment licenses to include not more than 200 poles on any one application. Licensor reserves the right to limit the filing for pole attachments to no more than 1,000 poles per service center on all applications that are pending approval by Licensor at any one time. Licensee further agrees to designate a desired priority of completion of the Pre-construction Survey and Make-ready Work for each application relative to all other of its applications on file with Licensor at the same time.

4.3 Properly completed license applications received by Licensor on the same day from two or more licensees for attachment accommodations on the same pole(s), shall be processed together. All Pre-construction Survey or Make-ready Work

required to accommodate the applicants will be completed simultaneously for the benefit of all applicants. All applicants will be rebated with the pro rata share of costs based on the number of applicants.

ARTICLE V – PRE-CONSTRUCTION SURVEY and MAKE-READY WORK

5.1 A Pre-construction Survey is required for each Utility Pole for which an Attachment is requested to determine the adequacy of the pole to accommodate Licensee's Attachments and Facilities. The Pre-construction Survey will be performed jointly by representatives of Licensor and Licensee, unless otherwise agreed to by all parties.

5.2 Licensor will process all requests for access to poles on a non-discriminatory basis in the order such requests are received.

5.3 Within forty-five (45) days of receipt of written notification in the form of a complete license application and the correct Survey Fee payment, Licensor shall perform or have performed a Pre-construction Survey and present the Survey results. The Survey results will contain one of the following statements:

1. If no Make-ready Work is required, a license shall be issued for the Attachment.

2. If Licensor determines that the pole to which Licensee desires to make Attachments is inadequate or otherwise needs rearrangement of the existing facilities thereon to accommodate the Licensee's Facilities, in accordance with the specifications set forth in Article VI, Licensor will provide Licensee with an itemized invoice for such anticipated Make-ready Work. The Make-ready Work will be performed following receipt by Licensor of advance payment, but not before a Pole Attachment Agreement has been fully executed by both the Licensee and Licensor. Upon receipt of the advance payment, Licensor will provide the Licensee with the estimated start and estimated construction completion date of the Make-ready Work.

3. If Licensor determines that the pole may not reasonably be rearranged or replaced to accommodate Licensee's Facilities for reasons of capacity, safety, reliability or engineering practices, the Licensor may refuse to grant a license for attachment. Licensor shall provide the specific reason(s) for such denial. Licensor shall not unreasonably exercise the right reserved hereunder.

5.4 Actual completion of Make-Ready Work by Licensor will depend on completion of all required Make-Ready Work by Licensee, other Joint Users or Joint Owners that must be completed prior to Licensor's performance of its Make-Ready Work. In performing all Make-Ready Work to accommodate Licensee's Attachments, Licensor will endeavor to include such work in its normal workload schedule.

5.5 To the extent practicable, Licensor shall provide Licensee, no less than sixty (60) days prior written notice of any modification of poles (such as pole replacement or relocation) other than routine maintenance, or modifications in response to emergencies, or to a request from a governmental authority.

ARTICLE VI - SPECIFICATIONS AND LEGAL REQUIREMENTS

6.1 Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of the latest editions of the following standards: (a) "Blue Book - Manual of Construction Procedures" (Blue Book), published by Telcordia Technologies Inc.; (b) the "National Electrical Code" (NEC), published by the National Fire Protection Association, Inc.; (c) the "National Electrical Safety Code" (NESC), published by the Institute of Electrical and Electronics Engineers, Inc.; and (d) rules and regulations of the U.S. Department of Labor issued pursuant to the "Federal Occupational Safety and Health Act of 1970", as amended (OSHA) or any governing authority having jurisdiction over the subject matter. Where a difference in requirements or specifications may exist, then, unless Licensor specifies otherwise, the more stringent shall apply.

6.2 Licensee shall be responsible for obtaining from the appropriate public and/or private authority any required authorization to construct, operate and/or maintain Licensee's Facilities on public and private property at the location of Licensor's poles. Licensee shall be responsible for obtaining permission from any Joint Owner(s) of the pole before making any attachment thereto. This permission shall be in the form of a license or other writing. Prior to the commencement of any attachment work by Licensee in a particular municipality, Licensee shall provide to Licensor a copy of the permits, licenses or authorizations obtained by Licensee for such Attachments from the applicable municipal authority having jurisdiction over the installation of Attachments on Utility Poles in the public ways of such municipality. In addition, in the event any municipality imposes additional fees, charges or operational requirements on Licensor as a result of, or in connection with Licensee's Attachments, Licensor shall notify Licensee of the same and shall have the right to require additional compensation from Licensee equal to the amount of such additional fees, charges or the cost to Licensor of compliance with such additional operational requirements. Licensor shall reasonably cooperate with Licensee if Licensee elects to challenge the legality or amount of such additional fees, charges or operational requirements. In the event that Licensee fails to comply with applicable legal requirements regarding the installation or relocation of its Attachments and such failure results in the

imposition of any fines, penalties or other liability being imposed upon and paid by Licensor, Licensee shall reimburse Licensor. Notwithstanding anything to the contrary herein contained, Licensor agrees that, if a Joint Owner challenges any provision of this Agreement, Licensor will cooperate with Licensee and enter into good faith negotiations with Licensee and such Joint Owner to resolve any such dispute, but shall not be required to issue any new licenses during such negotiations. During the pendency of any such good faith negotiations, Licensor agrees that it shall not have the right to terminate this Agreement on the basis that Licensee appears not to have obtained permission from any such Joint Owner for attachments to poles which are the subject matter of this Agreement.

6.3 No license granted under this Agreement shall extend to any of the Licensor's poles where the placement of Licensee's Facilities would result in a forfeiture of the rights of Licensor or any Joint Owner(s), to occupy the property on which such poles are located. If placement of Licensee's Facilities would result in a forfeiture of the rights of Licensor or any Joint Owner(s) to occupy such property, Licensee agrees to remove its Attachments forthwith; and Licensee agrees to pay Licensor and any Joint Owner(s) all losses, damages and costs incurred as a result thereof.

ARTICLE VII - CONSTRUCTION AND MAINTENANCE OF ATTACHMENTS

7.1 General Provisions

7.1.1 Licensee shall, at its own expense, construct and maintain its Attachments and Facilities on Licensor's poles in a safe condition and in a manner acceptable to Licensor. Licensee shall construct and maintain its Attachments and Facilities so as not to conflict with the use of Licensor's poles by Licensor or by other authorized users of Licensor's poles, nor electrically interfere with Licensor's facilities attached thereto.

7.1.2 Licensor shall specify the point of attachment on each of Licensor's poles to be occupied by licensee's Attachment. Where multiple Licensees' attachments are involved, Licensor shall attempt, to the extent practical, to designate the same relative position on each pole for each Licensee's attachments.

7.1.3 Licensee shall provide written notice to the Licensor of the actual dates of attachment within thirty (30) days of the date of attachment so that Licensor may promptly schedule a Post-construction Inspection. The written notice shall be accompanied by a completed form, signed on behalf the Licensor, indicating, for each pole, the distance between Licensee's attachments and Licensor's facilities (specifically, the distance

to the primary and secondary electric wires). Licensor shall provide Licensee with such form.

7.1.4 Licensee shall have resources available to move, transfer or temporarily relocate Licensee's Facilities as necessary to support Licensor's completion of both planned and emergent work. Requests for planned assistance shall be staffed within 48 hours. Requests for emergent assistance shall be staffed as soon as possible. Licensee shall provide a 24 hour contact phone number for assistance requests. If Licensee fails to respond, Licensor shall utilize other resources to complete necessary work and Licensee shall reimburse Licensor for costs incurred.

7.1.5 Should Licensor or any Joint Owner(s), or other Licensee need to attach additional facilities to any of Licensor's poles to which Licensee is attached, Licensee will either rearrange its Attachments on the pole or transfer them to a replacement pole, as determined by Licensor, so that the additional facilities of Licensor, Joint Owner(s) or other Licensee may be attached. Where such re-arrangement is required to permit Licensor to install primary electric wire on a secondary-only pole, the Licensee shall be responsible for the cost of rearrangement of Licensee's Facilities.

7.1.6 If Licensee does not rearrange or transfer its Attachments within fifteen (15) days after notification (which may be effected through the use of a computerized pole attachment tracking system used by multiple companies, commonly referred to as "NJUNS") or receipt of written notice from Licensor requesting such rearrangement or transfer and indicating that such pole is ready for rearrangement or transfer by Licensee, Licensor may perform or have performed such rearrangement or transfer, and, notwithstanding the provisions of subpart 7.1.7, Licensee agrees to pay the cost thereof.

7.1.7 Licensee shall not be required to bear any of the costs of rearranging or replacing its Attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or modification of an existing attachment sought by another party (excluding the Licensor) and should be paid for any work it performs to accommodate such request. Where multiple parties join in a modification, each party's proportionate share of the total cost will be based on a ratio of the amount of new space occupied by that party to the total amount of new space occupied by all parties joining in the modification. Licensor shall not be required to use revenue that may result from the use of any additional space resulting from such replacement or rearrangement to compensate parties that paid for the modification.

7.1.8 Licensor retains the right to temporarily move or transfer Licensee's Facilities as necessary to maintain its own infrastructure. Licensor will be compensated by Licensee for all costs associated with the need to temporarily move or transfer Licensee's Facilities in order to maintain Licensor's infrastructure.

7.1.9 Unless otherwise governed by law, all tree trimming made necessary, in the opinion of the Licensor, by reason of the Licensee's proposed Attachments at the time of attachment, provided the owner(s) of such trees grant permission to the Licensor, shall be performed by contractors approved by and under the direction of Licensor, at the sole expense of the Licensee.

7.1.10 In the event that a Utility Pole to which an Attachment has been made needs to be replaced with a new Utility Pole for any reason, Licensee agrees to act promptly in relocating its facilities to the new Utility Pole, but in no event later than fifteen (15) business days after NJUNS notification that the new pole has been set by the Licensor or joint owner of the Utility Pole and Licensee may proceed to relocate its facilities to the new Utility Pole. If Licensee fails to timely relocate its Facilities, Licensor shall have the right (a) to effect such relocation, at Licensee's sole risk, cost and expense, and without liability or recourse to Licensee, except for negligence or willful misconduct, and (b) to charge Licensee for any fines, penalties or charges incurred by Licensor or Joint Owner of the pole to any third party, including, without limitation, any municipality or agency thereof, or other attacher to the pole, as a direct or indirect result of such failure of Licensee to relocate its Attachments in a timely manner. The foregoing obligations of Licensee under (a) and (b) above shall not apply where Licensor requires that Licensor's employees perform the relocation of Licensee's facilities to a new Utility Pole and Licensor controls the performance of such relocation work. Licensee shall demonstrate on an annual basis that it has sufficient resources or contracts in place to relocate its facilities to new poles as needed.

7.1.11 Tree trimming needed as a result of adverse weather conditions such as wind, snow or ice storms, shall be performed by Licensor or its approved contractors. Since such tree trimming benefits Licensor, Licensee and other parties that may be lawfully attached to Licensor's poles, Licensee agrees to negotiate in good faith with the Licensor, on a case-by-case basis, to establish an appropriate sharing of costs associated with the tree trimming projects.

7.1.12 For each new Licensee Facility attached by Licensee to Licensor's poles on or after the date of execution of this Agreement, Licensee shall place identification tags on cables located on poles and identification apparatus

tags on any associated items of Licensee's Facilities. The requirements for identification tags are set forth in the Blue Book.

7.1.13 When Licensor deems it an immediate threat to safety and/or an emergency exists, it may rearrange, transfer, or remove Licensee's Attachments to Licensor's poles at Licensee's expense. Licensor shall make reasonable efforts to contact Licensee as circumstances permit.

7.2 Licensee's Maintenance Work, Overlash, Rebuild Work and Placement of Power Supplies

7.2.1 Licensee shall work cooperatively with Licensor when performing routine Licensee's Maintenance Work on its facilities and/or attachments. Cooperative practices shall include a system of notification by phone, facsimile, answering system, email, or otherwise for scheduling purposes. Any work, which involves six or fewer adjacent spans, shall be presumed to be routine Licensee's Maintenance Work. Significant simultaneous maintenance activity within a geographic area may be deemed by Licensor to be Rebuild activity.

7.2.2 Prior to commencing Rebuild activity, Licensee must first submit scope of Rebuild work information to Licensor for Licensor's review in its sole reasonable discretion and Licensee must receive prior written approval from Licensor before commencing any Rebuild work. In some cases, particularly where Make-ready work or multiple attachments are required by the Licensee, Licensor may require Licensee to submit a new license application for some or all of the poles involved in the Rebuild activity.

7.2.3 Licensee must follow Licensor's established policy and procedure for attaching power supplies to Licensor's Utility Poles as described in the Eversource Energy "Information and Requirements for Electric Supply Below 600 Volts" publication.

7.2.4 Licensee may Overlash its Attachments provided that (1) the attachment has been previously licensed; (2) the resulting messenger supported bundle shall not contain more than five (5) cables; (3) the sum of the diameters of the five cables shall not exceed three and one quarter (3.25) inches; and (4) the maximum resulting bundle tension under National Electric Safety Code heavy loading conditions, shall not exceed two thousand (2,000) pounds. Licensee shall not place an Overlash that fails to meet any of these four conditions unless and until Licensee first submits information to Licensor for Licensor's review in its sole reasonable discretion, and Licensee receives prior written approval from Licensor.

ARTICLE VIII - INSPECTION OF LICENSEE'S FACILITIES

8.1 The Licensor reserves the right to make Post-construction, Subsequent, and Periodic Inspections of any part or all of Licensee's Facilities attached to Licensor's poles. Licensor shall provide Licensee with a copy of any written report of such inspection within ninety (90) days following the inspection.

8.2 Where Post-construction Inspection by the Licensor has been completed and non-complying conditions have been identified, Licensee shall correct any non-complying conditions within thirty (30) days of the date of the written notice from the Licensor. If after said 30-day period Licensee has not corrected all such non-complying conditions, Licensor may notify Licensee that if all such non-complying conditions are not corrected within an additional 30-day period, no further attachment authorizations shall be issued to Licensee until Licensee's Facilities are brought into compliance. Licensee shall certify in writing compliance with the applicable construction standard for specified poles to which attachments have been made. If corrections are not made by Licensee within 30 days from the second notification by Licensor, the Licensor may perform or have performed such corrections and Licensee shall pay to the Licensor the cost of performing such work. Licensor shall have the right (but not the obligation) to conduct post-construction inspections of all Utility Poles to which Licensee's Attachments have been made. Such inspection shall be conducted within ninety (90) days after Licensor has been notified by Licensee that its installation is complete.

8.3 Licensor may undertake Subsequent Inspections to determine if appropriate corrective action has been taken by Licensee. If the Subsequent Inspection finds continued non-complying conditions, Licensor may perform or have performed corrective action at the sole expense of the Licensee, or Licensor may terminate the license pursuant to Article X.

8.5 The making of Post-construction, Subsequent and/or Periodic Inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation, or liability specified in this Agreement.

8.6 Licensor reserves the right to make Periodic Inspections of all or any part of the Licensee's Attachments or Facilities at the expense of Licensee, upon sixty (60) days written notice to the Licensee. Periodic Inspections of the entire plant of the Licensee will not be made more often than once every five (5) years unless, in Licensor's judgment, such inspections are required for reasons involving safety, or because of an alleged violation by Licensee of the terms of this Agreement.

8.7 In addition to the provisions of Section 8.6 above, Licensee shall pay to Licensor in advance of any Periodic Inspection the estimated cost of such inspection.

Following the completion of the inspection, Licensor shall reconcile the actual costs incurred in the inspection with the estimated payment and provide such reconciliation to Licensee, with reasonable supporting detail. Licensee shall pay any deficiency resulting from such reconciliation, and Licensor shall refund to Licensee any over-collection resulting from such reconciliation within thirty (30) days of submittal of the reconciliation. No interest shall be applied to either deficiency or over-collection, if payment is made within the thirty-day period.

8.8 Each party shall, upon written request from the other party, provide access to its Utility Pole Attachment records for purposes of enabling the requesting party to verify (a) the location, type and nature of its Attachments and (b) billing, payment and maintenance history.

ARTICLE IX - UNAUTHORIZED ATTACHMENTS

9.1 If any of Licensee's Facilities are attached to Licensor's poles without being licensed, Licensor, may recover fees as specified in subpart 9.2, without prejudice to its other rights or remedies under this Agreement, including termination, or otherwise, and require Licensee to submit in writing, within thirty (30) days after receipt of written notification from Licensor of the unauthorized attachment, a pole attachment application. If such application is not received within the specified time period, Licensee shall remove its unauthorized Attachments within thirty (30) days of the final date for submitting the required application, or Licensor may remove Licensee's attachments or facilities without liability at the Licensee's expense.

9.2 Upon discovery of an unauthorized Attachment, Licensee agrees to pay an amount equal to five (5) times the current applicable annual Attachment Fee specified in APPENDIX I, multiplied by the number of unauthorized Attachments. That unauthorized attachment charge shall be in addition to all other amounts due and owing to Licensor under this Agreement.

ARTICLE X – TERMINATION

10.1 60-Day Termination

In addition to rights of termination provided to the Licensor under other provisions of this Agreement, and except as expressly provided otherwise herein, the Licensor shall have the right to terminate Licensee's license granted under provisions of this Agreement where:

(a) the Licensee's Facilities are maintained or used in violation of any law or in aid of an unlawful act or undertaking;

(b) the Licensee ceases to have authority to construct and operate its facilities on public or private property at the location of the particular pole covered by the authorization;

(c) the Licensee fails to comply with any of the terms and conditions of this Agreement or defaults in any of its obligations thereunder;

(d) the Licensee attaches to a utility pole without having first been issued authorization therefore;

(e) the Licensee, subject to provisions specified in Article II, ceases to provide its services;

(f) the Licensee sublets or apportions part of the licensed assigned space or otherwise permits its assigned space to be used by an entity or an affiliate not a party to this Agreement.

(g) except in circumstances in which Licensor has accepted evidence of self-insurance in accordance with Article XIV, the Licensee's insurance carrier shall at any time notify the Licensor that the policy or policies of insurance as required in Article XIV will be or have been cancelled or amended so that those requirements will no longer be satisfied;

(h) the Licensee shall fail to pay any sum due under Article III or to deposit any sum required under this Agreement, or shall fail to maintain satisfactory surety as required in Article XII;

(i) any authorization that may be required by any governmental or private authority for the construction, operation and maintenance of the Licensee's Facilities on a pole is denied, revoked or cancelled and is not reissued or reinstated within thirty (30) days after such cancelation or revocation.

10.1.1 The Licensor will notify the Licensee in writing of any instances cited in this subpart. The Licensee shall take corrective action as necessary to eliminate the non-compliance and shall confirm in writing to the Licensor within sixty (60) days following such written notice that the non-compliance has ceased or been corrected. If Licensee fails to discontinue or correct non-compliance and fails to give the required written confirmation to the Licensor within the time stated above, the Licensor

may terminate the license(s), authorization and/or rights granted hereunder for the poles at which such non-compliance has occurred.

10.2 General

10.2.1 In the event of termination of any of the Licensee's licenses, authorization and/or rights hereunder, the Licensee, at Licensor's option and direction, shall remove its Facilities from the poles within sixty (60) days of the effective date of the termination; provided, however, that Licensee shall be liable for and pay all fees and charges pursuant to provisions of this Agreement to the Licensor until Licensee's Facilities are actually removed from the Utility Pole(s). If the Licensee is so directed by Licensor to remove its Facilities and fails to remove its Facilities within the specified period, the Licensor shall have the right to remove such facilities at the Licensee's expense and without liability on the part of the Licensor for damage or injury to such facilities or interruption of Licensee services.

10.2.2 When Licensee's Facilities are removed from a pole, no Attachment to the same pole shall be made until the Licensee has first complied with all of the provisions of this Agreement, as though no such Attachment had been made previously, and all outstanding charges due to the Licensor for such Attachment have been paid in full.

10.2.3 Any license issued under this Agreement shall automatically terminate when Licensee ceases to have authority to construct, operate and/or maintain its Attachments on the public or private property at the location of the particular pole covered by the license. Such automatic termination shall be stayed if the Licensee has sought judicial or regulatory review of the decision that: (1) has acted to terminate such authority or (2) has declared that the Licensee lacks such authority.

10.3 Licensee's Removal of Attachments

10.3.1 Licensee may at any time remove its Attachments from a pole after first giving Licensor written notice of such removal. Licensor shall verify removal and send a written confirmation within thirty (30) days. Billing for the attachment shall cease as of the last day of the month in which verification occurs

10.3.2 Following such removal, no Attachment shall again be made to such pole until Licensee shall have complied first with all of the provisions of this Agreement as though no such Attachment had been made previously and all outstanding charges due to the Licensor for such Attachment have been paid in full.

ARTICLE XI - ASSIGNMENT OF RIGHTS

11.1 Licensee shall not assign or transfer any license or any authorization granted under this Agreement, and such licenses and authorizations shall not inure to the benefit of Licensee's successors or assigns, without the prior written consent of Licensor, which shall be in the form of an assignment agreement satisfactory to the Licensor. Licensor shall not unreasonably withhold, condition, or delay such consent.

11.2 In the event such consent or consents are granted by Licensor, then the provisions of this Agreement shall apply to and bind the successors and assigns of Licensee. Licensee may, however, assign this Agreement without Licensor's consent to an entity controlling, controlled by, or under common control with Licensee or to an entity acquiring fifty-one percent (51%) or more of Licensee's stock or assets provided that any such assignment shall be subject to the assignee's being capable of assuming all of the obligations of Licensee hereunder. Any such assignment shall impose no obligations upon or be effective against Licensor, and Licensor shall have no liability to any assignee of such assignment, until Licensor has received prior notice of any such assignment. Licensee may also assign this Agreement, without Licensor's consent and without prior notice to Licensor, to an institutional mortgagee or lender providing financing to Licensee with respect to Licensee's Facilities in the event such institutional mortgagee or lender exercises its foreclosure right against Licensee and operates the Licensee's Facilities; provided such institutional mortgagee or lender is capable of assuming all of the obligations of the Licensee hereunder and further provided that such assignment shall not be effective against Licensor unless and until written notice of such assignment and exercise of rights is provided to Licensor. Anything herein to the contrary notwithstanding, Licensee shall not be relieved of any of its obligations hereunder without Licensor's prior written consent.

11.3 All notice of such assignments shall include any change to the notice address under this Agreement. Within thirty (30) days of the assignment, Licensor and assignee shall execute an assignment agreement.

11.4 No assignment of rights under the Agreement shall be effective unless and until Licensor shall have received from the proposed assignee a written assumption of all of the obligations of Licensee under this Agreement.

ARTICLE XII - SURETY REQUIREMENTS

12.1 Licensee shall furnish either a Surety Bond or irrevocable Letter of Credit at Licensee's option, satisfactory to the Licensor according to the following criteria:

Poles	Security
1 – 50	$10,000
51 – 500	$75,000
501 – 2000	$300,000
2001 – 3000	$450,000
3,000 +	$500,000 minimum

12.2 If the financial security is in the form of a bond, irrevocable Letter of Credit, or other security as deemed acceptable by Licensor, such instrument shall be issued by a nationally recognized and rated surety company or bank that is acceptable to the Licensor and said surety company and/or bank shall guarantee Licensee's obligations under this Agreement. The Licensee is obligated to maintain the security in the full amount for the terms of this Agreement.

12.3 The amount of the bond or the financial security shall not operate as a limitation upon the obligations or liabilities of the Licensee.

12.4 Licensee shall require the issuer of a bond, irrevocable Letter of Credit, or other security, to include, as a provision of a bond, irrevocable Letter of Credit, or other security, the obligation of such issuer to provide Licensor with written notice of the issuer's decision not to renew, or decision to cancel, the bond, irrevocable Letter of Credit, or other security at least sixty (60) days prior to the effective date of any such decision. Licensee shall, within forty-five (45) days from the date of any such notice, replace the bond, irrevocable Letter of Credit, or other security with another that satisfies the requirements

ARTICLE XIII - LIABILITY AND DAMAGES

13.1 Licensor reserves to itself, its successors and assigns, the right to locate and maintain its poles and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements, in compliance with its rates and tariffs and normal operating procedures. Licensor shall not be liable to Licensee for any interruption of Licensee's service, nor for interference with the operation of Licensee's communications services arising in any manner, except from Licensor's negligence, out of the use of Licensor's poles.

13.2 Licensor shall exercise reasonable care to avoid damaging the facilities of Licensee attached to poles under this Agreement and shall make an immediate report to Licensee of the occurrence of any such damage caused by Licensor's employees, agents or contractors. Licensor agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of damage to such Licensee's facilities proximately caused by the negligence of Licensor; however, Licensor shall not be liable to Licensee for any loss of Licensee's revenue or profits resulting from any interruption of Licensee's service caused by such damage or interference with the operation of Licensee's Facilities caused by such damage.

13.3 Licensee shall exercise reasonable care to avoid damaging the facilities of Licensor and of others attached to Licensor's poles and shall make an immediate report of damage to the owner of facilities so damaged. Licensee assumes all responsibility for any and all direct loss from damage caused by Licensee's employees, agents or contractors; however, Licensee shall not be liable to Licensor for any loss of Licensor's revenue or profits resulting from any interruption of Licensor's service caused by such damage or interference with the operation of Licensor's facilities caused by such damage.

13.4 Licensee shall indemnify, protect and save harmless Licensor from and against any and all claims, demands, causes of actions and costs, including attorneys' fees, for damages to property and injury or death to Licensee's employees or other persons, including but not limited to, payments under any Workers Compensation law or under any plan for employee's disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, use or removal of Licensee's Facilities or by their proximity to the facilities of all parties attached to Licensor's poles, or by any act or omission of the Licensee's employees, agents or contractors on or in the vicinity of Licensor's poles . The foregoing indemnity, hold harmless and defense provisions shall not apply in the case of claims which solely arise from the negligence, misconduct or other fault of Licensor. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct or joint fault of Licensee and Licensor, but in such case the amount of the claim for which Licensor is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of Licensee.

13.5 The Licensee shall indemnify, protect and save harmless Licensor from any and all claims, demands, causes of action and costs, including attorneys' fees, which arise directly or indirectly from the construction, attachment or operation of Licensee's Facilities on Licensor's poles, including but not limited to damages, costs and expense of relocating poles due to the loss of right-of-way or property owner consents, taxes, special charges by others (including, without limitation, municipal authorities), claims and demands for damages or loss from infringement of copyright, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from and against all

claims, demands and costs, including attorneys' fees, for infringement of patents with respect to the manufacture, use and operation of Licensee's Facilities in combination with poles or otherwise. The foregoing indemnity shall not apply in the case of claims which solely arise from the negligence, misconduct or other fault of Licensor. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct, or joint fault of Licensee and Licensor, but in such case the amount of the claim for which Licensor is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of Licensee.

13.6 Licensor and Licensee shall promptly advise each other of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by the erection, maintenance, repair, replacement, presence, use or removal of facilities governed by this License Agreement. Copies of all accident reports and statements made to a Licensor's or Licensee's insurer by the other Licensor or Licensee or affected entity shall be furnished promptly to the Licensor or Licensee.

13.7 Unless expressly provided for otherwise herein, neither Licensor nor Licensee shall be liable to the other for any special, consequential or other indirect damages arising under this Agreement.

13.8 The provisions of this Article shall survive the expiration or earlier termination of this Agreement or any license issued hereunder.

ARTICLE XIV - INSURANCE

14.1 Licensee shall secure and maintain (and ensure its subcontractors, if any, secure and maintain), and shall provide copies to Licensor, all insurance and/or bonds required by law or this Agreement including without limitation:

(a) Commercial General Liability insurance (including, but not limited to, premises-operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability; independent contractors; personal injury) with limits of at least $2,000,000 combined single limit for each occurrence.

(b) Commercial Automobile Liability insurance with limits of at least $2,000,000 combined single limit for each occurrence. Notwithstanding, if the Licensee does not own or operate any vehicles or automobiles associated with the

Licensee's business or associated with the work related to this Agreement, then Licensee must only provide satisfactory evidence that its subcontractor(s) have purchased and maintained Commercial Automobile Liability insurance in such amount.

(c) Workers' Compensation insurance as required by statute and Employer's Liability insurance with limits of not less than $1,000,000 per occurrence.

14.2 The above limits may be satisfied by a combination of underlying/primary and excess/umbrella insurance. All policies provided by the Licensee shall be deemed primary and non-contributory to all other applicable coverages. The Licensee shall waive its right of subrogation for all insurance claims. The Commercial General Liability and Commercial Auto Liability policies must name Licensor, its subsidiaries and affiliates as additional insured's. The Licensee's insurance companies must be licensed to do business in the applicable state(s) and must meet or exceed an A.M. Best rating of A-X or its equivalent.

14.3 All insurance must be in effect before Licensor will authorize Licensee to make attachment to Licensor's poles and shall remain in force until Licensee's Facilities have been removed from all such poles. For all insurance, the Licensee must deliver an industry-recognized certificate of insurance evidencing the amount and nature of the coverage, the expiration date of the policy and the waiver of subrogation and stating that the policy of insurance issued to Licensee will not be cancelled or changed without thirty (30) days written notice to Licensor. Also, where applicable, such certificate of insurance shall evidence the name of the Licensor as an additional insured. The Licensee shall submit such certificates of insurance annually to the Licensor as evidence that it has maintained all required insurance.

14.4 Licensee is responsible for determining whether the above minimum insurance coverages are adequate to protect its interests. The above minimum coverages shall not constitute limitations upon Licensee's liability. Failure to maintain required insurance shall constitute a breach of this Agreement.

ARTICLE XV - GENERAL PROVISIONS

15.1 Authorization Not Exclusive

Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any pole covered by this Agreement.

15.2 Failure to Enforce

Failure of Licensor to enforce or insist upon compliance with any of the terms or conditions of this Agreement, or to give notice or declare this Agreement or any authorization granted hereunder terminated, shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

15.3 Notices

APPENDIX II sets forth where written notices required under this Agreement shall be sent to Licensor and Licensee. Notice shall be acceptable in the following forms: first class mail, or if time-sensitive, facsimile with electronic confirmation of receipt, followed by first class mail or overnight mail with receipt. Licensee shall complete APPENDIX II and submit it to Licensor with this Agreement.

15.4 Severability

If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions. If the invalid or unenforceable provision or provisions shall be considered an essential element of this Agreement, the parties shall promptly attempt to negotiate a substitute therefore.

15.5 Choice of Law, Jurisdiction and Venue

The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to the principles of conflicts of law. All actions under this Agreement shall be brought in a court of competent subject-matter jurisdiction in Suffolk County, Massachusetts, or before a regulatory agency with subject-matter jurisdiction, and both parties agree to accept and submit to the personal jurisdiction of such court or regulatory agency. Licensee also waives any objection to the venue of such courts. Licensee also agrees to submit to the jurisdiction of any court in the United States wherein an action is commenced against Licensor based on a claim for which Licensee has indemnified Licensor hereunder.

15.6 Compliance with Laws

The parties hereto shall at all times observe and comply with, and the provisions of this Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto under this Agreement, so long as such laws, ordinances, or regulations remain in effect.

15.7 Survival

All rights and obligations hereunder granted or incurred prior to and which by their nature would continue beyond the cancellation, termination, or expiration of this Agreement shall survive such cancellation, termination, or expiration.

15.8 Use of Information

Licensee may provide to Licensor license applications and business plans of its future needs for pole attachments. Such information will allow Licensor to better forecast personnel and equipment requirements. However, as to business plans, such information shall be deemed for use as advance planning purposes only, and no obligation shall be created that Licensor hire personnel or purchase equipment, or Licensee submit license applications for the pole attachments. Such information shall be used only by such employees or contractors of Licensor who have responsibilities relating to the administration of, or to work to be performed under, this Agreement and said employees shall treat such information as Licensor treats its own confidential information of similar type and value. Licensor's obligations hereunder shall not extend to any information that are now available to the public or become available by reason of acts or omissions not attributable to Licensor.

15.9 Dispute Resolution

In the case where Licensee claims that a term or condition is unjust or unreasonable or any dispute arises between the parties relating to this agreement, Licensee shall submit a complaint to Licensor's pole attachment coordinator, so designated in accordance with regulations, specifying all information and its argument relied on to justify its claim. Licensor shall provide a written response to such complaint within 30 days after receipt of the complaint. Such response shall specifically address all contentions made by Licensee. If Licensee continues to have issues, it may request a meeting to discuss such issues. Such meeting shall be held within thirty (30) days. If the Licensee is not satisfied with the results of such meeting, it may file a complaint with the regulatory body of competent jurisdiction.

15.10 Emergency Conditions

All parties shall work cooperatively in the case of an emergency to restore service to their respective customers. Licensee recognizes that Licensor's priority in the event of any emergency is the restoration of the electric system.

ARTICLE XVI - TERM OF AGREEMENT

Except as provided below, this Agreement shall remain in effect for a period of ten (10) years from the execution date hereof (the "Initial Term"). Licensee shall have the option to extend the Initial Term for up to three (3) additional five (5)-year terms (each an "Extended Term") by notice to Licensor given not less than six (6) months prior to the expiration of any Term; provided, however, that the Licensor may, upon written notice, require the Licensee to engage in good-faith negotiations with the Licensor to amend the Agreement to comport with regulatory changes or obligations. If, the parties cannot agree to an amendment, they shall submit the matter to the regulatory agency with jurisdiction to resolve the matter. The Agreement may be terminated by Licensee by written notice of termination no less than 30 days prior to the effective date of such termination; provided, however, that such early termination shall not become effective until the Licensee has discontinued all existing licenses and has removed any and all Facilities. The Agreement may be terminated upon written notice by the Licensor if, within one year from the date of this Agreement, the Licensee has placed no Facilities on the Licensor's poles in accordance with the Agreement.

Upon execution, this Agreement cancels and supersedes all previously executed Agreements between the parties with respect to Licensee's Attachments in the Power Space on Licensor's Utility Poles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple originals on the day and year first above written.

NSTAR ELECTRIC COMPANY,
d/b/a EVERSOURCE ENERGY, Licensor

By: _____

(Print Name) _____

(Title) _____

(Date) _____

Otelco, **Licensee**

By: _____

(Print Name) David Allen

(Title) Vice President of Network Operations

(Date) 2/25/2021

APPENDICES

APPENDIX I

ATTACHMENT FEES AND CHARGES

Annual Attachment Fees are as follows:

State	JO/JU	Sole Owned
WMA (Comm Space)	$4.50	$9.00
WMA Antenna	$100.00	$200.00

Annual Attachment Fees for ornamental light fixtures have been waived.

Annual Attachment Fees are calculated from the first day of the month following the date the license is issued.

Fees shall be payable annually in advance, unless otherwise provided. Payment is due within the later of thirty (30) days from the first day of January or thirty (30) days from the date the bill is issued.

Pre-Construction Survey Charge:

Less than 10 poles: No charge
10 poles or more: $50.00 per pole

Make Ready Pricing Note:
NSTAR Electric does not utilize unit pricing for estimating or billing make ready work. NSTAR Electric will estimate all necessary make ready work on a time and materials basis. Estimates will be provided prior to make ready work being conducted and reconciled with the actual costs following completion of the work.

APPENDIX II

NOTICE ADDRESSES

Licensor:

NSTAR Electric Company, d/b/a Eversource Energy
247 Station Drive, SE280
Westwood, MA 02090
Attn: Richard A Comeau
Phone: 781-441-8162
Title: Pole Administrator
E-Mail: richard.comeau@eversource.com

Licensee –

CRC Communications LLC d/b/a OTELCO
56 Campus Drive
New Gloucester, ME 04260
Attn: Debbie Brill
Tile: OSP Licensing Manager
Phone: 207-992-8020
Email: debbie.brill@otelco.com

With a copy to:

CRC Communications LLC d/b/a OTELCO
900D Hammond Street
Bangor, ME 04401
Attn: Trina M. Bragdon
Title: General Counsel & Vice President of HR and Regulatory Affairs
Email: legal@otelco.com

GoNetspeed

Exhibit 3

National Grid Pole Attachment Agreement

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WIRED AERIAL LICENSE AGREEMENT

Date: January 18, 2022 **Agreement: 2103**

BETWEEN

Massachusetts Electric Company d/b/a National Grid
(LICENSOR)

AND

CRC Communications LLC d/b/a OTELCO
(LICENSEE)

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This **Wired Aerial License Agreement 2103**, is made this **18th** day of **January**, **2022**, between Massachusetts Electric Company d/b/a National Grid, a Massachusetts corporation, having its principal office at 40 Sylvan Road, Waltham, Massachusetts 02451 (hereinafter referred to as the "Licensor"), and CRC Communications LLC d/b/a OTELCO, a corporation organized and existing under the laws of the State of Delaware, having its principal office at 56 Campus Drive, New Gloucester, ME 04260 (hereinafter referred to as the "Licensee"), collectively referred to as the "Parties."

W I T N E S S E T H

WHEREAS, Licensee desires to install, own, and operate **Wired Aerial Fiber Attachments** on Poles (as defined below) of Licensor within the municipalities listed on Exhibit One to this Agreement; and

WHEREAS, Licensor is willing to permit the Licensee to install and operate **Wired Aerial Fiber Attachments** on Poles where space is available, and it is safe, and where such use will not interfere with or threaten public safety, Licensor's or other user's safe use and operation of the Poles or the safety, reliability or integrity of the Licensor's electric distribution system.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein, and other good and valuable consideration, the Parties do hereby mutually covenant and agree as follows:

1.0 DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the following meanings:

1.1 "**Agreement**" has the meaning set forth in the preamble above.

1.2 "**Anchor Rod**" means a metal rod connected to an anchor and to which a guy strand is attached. Also, known as a "guy rod".

1.3 "**Attachment**" means any single wire, cable or Suspension Strand, including wires or cables lashed to it, or any other hardware, equipment, apparatus, or device, placed on Licensor's pole, used for providing **Cable Service and/or Communication Services.** This shall not include any wireless hardware, equipment, apparatus, or device.

14 "**Cable Operator**" is as defined in Section 602 of the Cable Communications Act of 1984 (47 USC § 521-559) as amended from time to time.

1.5 "**Cable Service**" is as defined in Section 602 of the Cable Communications Act of 1984 (47 USC § 521-559) as amended from time to time.

1.6 "**Communication Service**" means any transmission of writing, signs, signals, pictures and/or sounds of all kinds by wire, cable or other like connection between the points of origin and reception of such transmission, other than Cable Service.

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1.7 **"Communication Space"** means that portion of the usable Pole space in which communication wires and devices have traditionally been located and that can be accessed by a Qualified Communication Worker.

1.8 **"Electric Space"** means that space on Poles where Licensor has installed or may install energized electric conductors and related electric equipment. This space is also known as the "Supply Space," as defined in the National Electric Safety Code (NESC).

1.9 **"Field Survey"** means an on-site engineering study and/or office survey of the Poles on which Licensee wishes to attach or relocate, materially alter or replace existing attachments in order to determine if the Pole can safely accommodate the Attachment(s), and if a determination is made that a safe attachment is not possible, what work, if any, is required to make the Pole ready to accommodate the requested Attachment(s), and to provide the basis for estimating the cost of this Make-Ready Work.

1.10 "**Franchise**" is as defined in Section 602 of the Cable Communications Act of 1984 (47 USC § 521-559) as amended from time to time.

1.11 **"Good Utility Practice"** means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any practices, methods, and acts which, in the exercise of good judgment in light of the facts known at the time the decision was made, could have expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the Licensor. Good Utility Practice shall include conformance to the policies, criteria, practices, guidelines, and requirements of the National Electric Reliability Council, National Electric Safety Code ("NESC"), the Northeast Power Coordination Council, and the New England or New York Independent System Operators, or their successor organizations.

1.12 "**Guy Strand**" means a cable that is attached to a pole and anchor rod (or another pole) for purposes of reducing pole stress.

1.13 "**Identification Tags**" means identification tags used to identify Licensee's plant. The two types of identification tags are cable and apparatus tags as described in APPENDIX III, Form F.

1.14 **"Joint Owner"** means a person, firm or corporation having an ownership interest in a Pole and/or anchor rod with Licensor.

1.15 "**Joint User**" means a party with whom Licensor has entered into, or may hereafter enter into, a written agreement covering the rights and obligations of the parties thereto with respect to the use of poles and anchor rods owned by each party.

1.16 **"Make-Ready Work"** means the work required to accommodate Licensee's Attachment(s) on Pole(s), including rearrangement and/or transfer of existing

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Attachment(s) on a Pole, replacement of a Pole or any other changes required to accommodate Licensee's Attachment(s) on Pole(s).

1.17 "**Other Licensee**" means any entity, other than Licensee as defined herein, or a Joint User, to whom Licensor has or hereafter shall extend the privilege of attaching Attachment(s) to Licensor's poles.

1.18 "**Overlash**" means any wire or cable which is lashed to any other wire, cable or Suspension Strand where such wire, cable or Suspension Strand has already been licensed for attachment to Licensor's pole.

1.19 **"Pole"** means any vertically oriented utility structure constructed predominately of treated wood, including metal, composites and concrete used to support electrical conductors and other utility equipment necessary to facilitate the operation of an electric distribution system owned solely or jointly owned by Licensor and used for the attachments of Attachment(s).

1.20 **"Qualified Communication Worker"** means a worker meeting all current training and experience requirements of all applicable federal, state, and local work rules and of the Licensee, including OSHA 1910.268.

1.21 **"Qualified Electrical Worker"** means a worker meeting all training and experience requirements of all applicable federal, state, and local work rules and Licensor's work rules, including OSHA 1910.269.

1.22 "**Suspension Strand**", also known as "Messenger Cable," means a cable attached to a pole and used to support communications Attachment(s).

2.0 SCOPE OF AGREEMENT

2.1 This non-exclusive Agreement is intended to permit the Licensee to place Attachments on Poles owned by Licensor. Subject to the provisions of this Agreement, Licensee shall make written application to Licensor seeking licenses to place equipment on Poles, and, if granted, Licensor will issue to Licensee a revocable, non-exclusive license authorizing Attachment(s) to Poles within the municipalities listed in Exhibit One. The licenses shall be in the form attached to this agreement as found in Exhibit Two, Form A-1.

2.2 Licensor agrees to provide a license for the attachment by the Licensee of Attachment(s) on Poles. Such license will be consistent with Licensor's core business requirements and generally accepted safety, operational, reliability, and engineering requirements. Notwithstanding the above, nothing contained herein shall be construed to compel the Licensor to construct, reconstruct, retain, extend, repair, place, replace, maintain, or make space available for attachment of any Attachment(s) on Poles. Licensor reserves the right to revoke any licenses provided hereunder as necessary to ensure the safe and reliable operation and maintenance of Licensor's electric distribution system.

2.3 Any license granted to Licensee by this Agreement shall constitute a limited, nontransferable, revocable license to the extent such use is permitted pursuant to the terms

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of the applicable contracts, deeds, agreements, easements, leases, licenses, permits, or franchises conveying to Licensor its individual legal rights in any public or private right-of-way.

2.4 The Licensee understands that Licensor's rights may not be sufficient to permit installation of any Attachment(s) and Licensee's use of the Pole, including any Licensee required Pole replacement. Licensee shall obtain, at its own cost and expense, all necessary franchises, licenses, permits, or rights ("Approvals") which relate to Licensee's installation and use of any Attachments upon a Pole, including Licensee required Pole replacements and the performance of its obligations hereunder. Upon Licensor's request, Licensee shall provide, at Licensee's sole cost and expense, a copy of such Approvals to Licensor prior to Pole replacement or attaching any Attachment(s).

2.5 Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall be construed to grant, and Licensor makes no representations or warranties with respect to, and is not purporting to provide, any third party or Joint Owner attachment rights, licenses or consents for or in connection with this Agreement or any license. Poles may be jointly owned. Prior to the Licensor authorizing use of jointly owned Poles, Licensee agrees to obtain and provide to Licensor the Joint Owner's prior written consent for any proposed Facility. In the event the Licensee does not obtain the consent of the Joint Owner(s), the Licensee shall not install any Attachment(s) on any Poles that are jointly owned.

2.6 The license granted by the Licensor hereunder authorizes the installation, operation, use, and maintenance of Attachment(s) for the transmission and/or receiving telecommunication signals to such Attachment(s). The license does not provide Licensee with any ownership interests in Pole or the replaced Pole, real property, or the right-of-way and is for Licensee's sole use and purpose.

2.7 Attachments shall be installed and maintained by the Licensee at Licensees' sole cost and expense.

2.8 Licensee represents and warrants that all Licensee employees, agents, or contractors that work within the Electric Space are Qualified Electrical Workers and contractors that work within the Communications Space are Qualified Communications Workers.

2.9 Unless otherwise determined by Licensor, required Make-Ready Work on Licensor's Attachments to support Licensee Attachment installation including any required Pole replacement shall be performed by the Licensor or Licensor's contractor. All support services costs and make-ready costs required to support Licensee's application for installation of any Attachment(s) shall be paid by Licensee.

2.10 Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Licensor with respect to any agreement(s) and arrangement(s) which Licensor has heretofore entered into or may in the future enter into with others not parties to this Agreement regarding the Poles covered by this Agreement. The rights of Licensee shall at all times be subject to any such existing agreement(s) or arrangement(s) between Licensor and any Joint Owner(s) or joint user(s) of Poles.

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2.11 The timeframes set forth in this Agreement related to the construction and installation of Attachments shall not apply to situations in which an existing Pole must be replaced. If a Pole is being replaced, Licensor will use commercially reasonable efforts to make arrangements with the Licensee for Licensee to transfer the Attachment(s) in a reasonable timeframe in conjunction with the National Joint User Notification System (NJUNS).

3.0 APPLICATION FOR AND INSTALLATION OF LICENSEE ATTACHMENTS

3.1 Before Licensee attaches any Attachment(s) to any Pole, Licensee shall make a complete application for and have received a license from Licensor for the Attachment(s) in the forms of Exhibit Two, Forms A-1 and A-2. Licensee's application shall include a listing of all Poles to which Licensee seeks to make attachment, including copies of the installation plans and specifications for such Attachment(s) for Licensor's prior review and approval. Prior to attaching any Attachment(s) Licensee shall be obligated to obtain any required consents from Joint Owners as set forth herein. Subject to Licensor's prior review and approval, Licensee shall design, specify, and supply all material associated with the installation, operation, and maintenance of any Attachment(s).

3.2 Licensee agrees to limit the filing of Application(s) for Pole Attachment License to no more than 150 Poles on any one application and no more than 100 applications which are pending approval by Licensor per month. Licensee further agrees to designate a desired priority of completion of the Field Survey and Make-Ready Work for each application relative to all other of its applications on file with Licensor at the same time.

3.3 Licensor's review of Licensee's application will include a Field Survey for each Pole listed in Licensee's application. The Field Survey will be conducted by the Licensor or a Licensor approved contractor employed by the Licensor, at Licensee cost. The Field Survey shall be completed within forty-five (45) days following receipt of a complete application to attach any Attachment(s) to Pole(s). The forty-five (45) day timeframe shall be extended an additional fifteen (15) days for a large number of applications. For purposes of this Agreement, a "large application" shall mean any submittal of multiple applications in which a Licensee requests the attachment of one hundred (150) or more Attachments on Poles.

3.4 If any Joint Owner or existing third-party user is required to participate for a Field Survey, Licensee shall obtain and coordinate such participation. Joint Owner and existing third party attacher costs (e.g., Field Surveys and make-ready costs), if any, will be identified by the Joint Owner and existing third party attacher and invoiced to and paid by the Licensee.

3.5 Within forty-five (45) days of receipt of a complete application, Licensor shall advise Licensee in writing if access to the Pole is denied or accepted. The Licensor will extend this forty-five (45) day timeframe an additional fifteen (15) days for large applications. Licensor reserves the right to refuse to grant a license for attaching Attachment(s) to a Pole or refuse authorization for relocating, materially altering, or replacing attachments to a Pole when Licensor determines that the Pole lacks capacity, or for reasons that relate to safety, reliability, or engineering standards. Licensor's grant of access to a Pole will be contingent upon Licensee's agreement to pay for Make-Ready Work as set forth hereunder.

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3.6 In the event Licensor determines that a Pole to which Licensee desires to make attachment is not compliant with National Electric Safety Code ("NESC") and Licensor's construction standards or otherwise needs rearrangement of the existing Attachment(s) on the Pole to accommodate the Attachment of Licensee, Licensor will indicate on the Authorization for Pole Make-Ready Work (Exhibit Two, Form B-2) the estimated cost of the required Make-Ready Work and return it to Licensee. Licensor shall provide such estimate to Licensee within fourteen (14) days after providing the written notification of Licensor's decision to grant access to the Pole.

3.7 Licensee shall have fourteen (14) days from receipt of Licensor's estimate for completion of the Make-Ready Work to accept or reject the estimate. If the Licensee does not accept or reject the estimate for completion of the Make-Ready Work, the Application(s) for ole Attachment License is subject to cancellation.

3.8 Upon Licensee's acceptance of the estimate for the Make-Ready Work, and payment of the enumerated fees, Licensor will commence the Make-Ready Work within a commercially reasonable timeframe. Alternatively, with Licensor's express written authorization, Licensee may install the approved Attachments with Qualified Communication and/or Electrical Workers. In the event the Licensor assigns Make-Ready Work responsibility to the Licensee; the Licensee shall utilize Qualified Communication or Electrical Workers acceptable to Licensor from the Licensor's preferred contractor list provided to the Licensee by the Licensor.

3.9 Upon completion of all required Make-Ready Work by Licensor and all other attachers on the Pole and Licensee securing all required permits and approvals, and prior notice by Licensee in accordance with Article 11.0 herein, the Licensee may proceed to install the approved Attachment(s) with a certified electrician Installation of any Attachment(s) shall commence within sixty (60) days of licensing and shall be worked continuously until completion unless otherwise agreed to by Licensor.

3.10 For the attachment of any Attachment(s) outside of the Communications Space and Electric Space, Licensor shall use commercially reasonable efforts to complete the Make-Ready Work within ninety (90) days. This timeframe shall be extended to one hundred thirty-five (135) days for large applications.

3.11 Licensor retains the right to extend the Make-Ready Work timeframes set forth above, as necessary with notice to the Licensee if Licensor determines, in its sole discretion, that additional time is necessary to complete the Make-Ready Work. Such extensions include, but are not limited to, Inclement Weather, Storm Restoration, Commercial Outages, Police Details, Railroad Permitting, Construction Machinery, Sufficient Lead Time and Available Resources.

3.12 Make-Ready Work and any Attachment(s) installed by Licensee or Licensee's contractor are subject to Licensor inspection both during construction and upon completion of construction. The cost of such inspections by the Licensor are to be paid by the Licensee.

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Licensor shall estimate the cost of any Licensor inspection and Licensee shall pre-pay the estimated inspection costs prior to installing any Attachment(s) and shall remain liable for any actual Licensor inspection costs in excess of the pre-paid estimated inspection fees. The Licensor reserves the right to conduct a post construction inspection of any Attachment(s), such inspection shall be performed within ninety (90) days after the installation of any Attachment(s).

3.13 In the event that replacement of a Pole is requested by the Licensee to accommodate the installation of any Attachment(s), Licensee shall pay all costs related to replacement of the Pole, including, but not limited to, transfer of all existing Attachment(s) already attached on the Pole and removal and disposal of the old Pole. In addition, the Licensee shall obtain and pay all cost for required permits and approvals for replacement of a Pole. Licensee's payment of costs to Licensor for replacement of a Pole does not provide Licensee with any ownership interest in the replaced Pole.

3.14 Licensee shall not be entitled to reimbursement from Licensor of any amounts Licensee paid to Licensor for replacements of Poles or for rearrangement of Attachment(s) attached on the Pole by reason of subsequent Licensor or other third-party use of any additional space resulting from such replacement of Pole or rearrangement of other attachments on the Pole. In the event the Licensee requests the replacement of a Pole for additional height, the Licensee requested pole length will not exceed fifty-five (55) feet (overall length including setting depth).

3.15 In the event Licensor agrees to install and/or maintain Licensee's Attachment(s), such installation and maintenance shall be performed under the terms and conditions of Licensor's standard Services Agreement, the terms and conditions of which may be revised from time to time.

3.16 Subject to the provisions of this Agreement, where Licensee has actually installed its Attachment(s) to the space of a specific Pole as authorized by the Licensor, and such Pole is replaced, Licensee shall continue to have a right to use the same space on the replacement Pole.

3.17 Licensee shall mark or label the site of, or on, each Attachment site providing a twenty-four (24) hour contact number and as applicable, radio frequency emission hazards, and required worker clearances from operational Attachment(s), which the Licensee shall be responsible for updating as necessary to ensure accuracy throughout the term of this Agreement. See As described in APPENDIX III, Form F, Licensee shall place Identification Cable Tags on cables located on poles and Identification Apparatus tags on any associated items of Licensee's Plant, e.g., guys, anchors or terminals licensed on or after the effective date of this Agreement, and at any time when a pole is replaced or when an Attachment is relocated, materially altered, Overlashed, or replaced. Licensor, in its sole determination, shall have the right to approve all Identification Tags that are different than those described in APPENDIX III, Form F.

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4.0 OPERATION AND MAINTENANCE OF LICENSEE ATTACHMENT(S)

4.1 Maintenance of all Attachment(s) shall be performed by Licensee at Licensee's sole cost and expense. Licensee shall provide Licensor a minimum of ten (10) business days' advance notice of the Licensee's need to perform routine or scheduled maintenance on any Attachment(s). Such notice shall include work scope and schedule, identification of workforce, identity and contact information of responsible site supervisor.

4.2 For emergency maintenance, Licensor agrees to not unreasonably delay, restrict, or deny Licensee access to the Electric Space. Notwithstanding the above, Licensee shall provide advance written notice to, and wait to receive authorization from, Licensor prior to accessing the Electric Space in accordance with this Agreement.

4.3 Unless otherwise authorized by the Licensor, Licensee will perform routine maintenance and installation of Attachment(s) only during daylight hours.

4.4 The Licensee shall be responsible for its own relocation costs associated with Pole replacement resulting from routine Pole maintenance performed by Licensor or mandated Pole relocations or modifications ordered by a government or a regulatory agency having appropriate jurisdiction.

4.5 Licensee shall register with and use the state-wide transfer notification system, National Joint Utilities Notification System ("NJUNS") which is used by the Licensor. Attachment requests will not be processed unless the Licensee is a registered user and updates the transfer notification system.

4.6 Both Parties agree that in the event of wide spread interruptions of Licensor and Licensee Attachment(s) (e.g., a major storm) in connection with damage to the Poles, Licensor shall use Good Utility Practice to support restoration of Poles and Licensee's efforts to restore any Attachment(s), consistent with Licensor's priority obligations to its core electric utility business. In the event of localized interruptions (e.g., motor vehicle accidents), Licensor shall notify Licensee of the incident within a reasonable period of time after addressing the incident. Licensee shall reimburse Licensor for all support services provided by Licensor to clear and/or assist in the restoration of any Attachment(s). Both Parties further agree that in the event of wide spread interruptions of any Attachment(s), Licensee may with authorization by the Licensor, as a temporary restorative action, temporarily place such Attachment(s) on available adjacent Poles or the same Pole, in a manner consistent with all applicable safety and construction standards and practices. Pursuant to Article 11.2 herein, Licensee further agrees to notify Licensor within 24 hours of the temporary restorative action and will diligently pursue a permanent corrective action including removal of all such temporary attachment(s).

4.7 When applicable, Licensor shall specify the point of attachment on each of Licensor's Poles to be occupied by Attachment(s).

4.8 All tree trimming made necessary, in the opinion of Licensor, by reason of Attachment(s) installed by the Licensee, provided the owner(s) of such trees grants permission to Licensee, shall be performed by contractors approved by Licensor and at the direction of the Licensor, at the sole cost and expense of Licensee, provided, however, all trimming as may be required

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on Licensee's customers' premises, to clear Licensee's drops, shall be done by Licensee at its expense.

4.9 Licensor does not make any representation or warranty as to the present or future strength, condition, adequacy, fitness or state of any Poles, wires, or apparatus. Licensee is responsible for determining, by test or observation, whether the Poles are safe to ascend. If the integrity of any Pole is in question or is marked by Licensor as unsafe, Licensee shall confirm the condition of Pole with Licensor and shall not ascend the Pole. Licensee assumes all liability and risk of loss in connection with injury to any person(s) (including death) or any property that is damaged as a result of Licensee's ascension up, or work on, any Poles subject to this Agreement.

5.0 SPECIFICATIONS

5.1 All Attachments shall be installed and maintained by the Licensee in accordance with applicable national codes and standards, Good Utility Practice, Licensee drawings and specifications as approved by Licensor as set forth in Exhibit Three, applicable Licensor's policies, procedures and standards including Licensor Standards, and any applicable Federal, state, and local laws and ordinances. All fees, notices, permits, approvals, certifications, and licenses, required for the installation, maintenance, and operation of Attachments, shall be obtained and paid for by Licensee and shall be provided by the Licensee to Licensor at no charge and upon request by Licensor, prior to the start of Make-Ready Work.

5.2 If any part of the Attachment(s) is/are not in compliance with the NESC or Licensor's construction standards and properly maintained by the Licensee, Licensor may upon ten (10) days' written notice to Licensee and in addition to any other remedies Licensor may have hereunder, remove Attachment(s) from any or all Poles or perform such other work and take such other action in connection with said attachments that Licensor deems necessary or advisable to provide for the safety of the public and/or Licensor's employees, protect the safety, reliability and integrity of the Licensor's distribution system and Attachments, and/or performance of Licensor's service obligations at the cost and expense of Licensee and without any liability to the Licensor; provided, however, that when in the sole judgment of Licensor any condition may endanger the safety of Licensor's employees or others, or may interfere with the performance of Licensor's service obligations or threaten the safety, reliability and integrity of the Licensor's electric distribution system and Attachments, Licensor may take such action without prior notice to Licensee.

6.0 INTERFERENCE

6.1 Licensee will use and operate any Facility(ies) in a manner that will not cause interference (including, but not limited to, blocking of access to the Pole, radio frequency (RF) interference, mechanical interference, or any interference with underground utilities) of Licensor's and other authorized users' use of the Pole. In the event any such interference occurs, Licensee will (i) remedy such interference within seventy-two (72) hours after receipt of written notice (including email) from Licensor, conditioned on Licensor's ability to support corrective actions, if required, or (ii) except for intermittent testing, cease operation of any Facility(ies) until such interference can be eliminated. If such interference

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is not eliminated within said seventy-two (72) hour period, Licensor will have the right, in addition to any other rights that it may have at law or in equity, to take all necessary and reasonable steps, at Licensee's sole cost and expense, to eliminate such interference (after giving reasonable prior notice to Licensee). If the Licensor is unable to eliminate such interference, Licensor shall have the right to terminate the license related to the Facilities causing such interference by giving at least sixty (60) days' notice to Licensee, in which case any and all future obligations Licensor may have hereunder (will cease with respect to such terminated license.

6.2 Subsequent to the Installation of any Facility(ies), Licensor will not knowingly permit the installation or modification by third parties of any other improvement (including, without limitation, transmission or reception EV charging stations or other devices) on the Pole if such improvement could cause or is likely to cause interference (including, but not limited to, blocking of access to the Pole, radio frequency interference, mechanical interference, or any interference with underground utilities) with Licensee's then existing Facilities. In the event any such interference occurs, Licensor shall direct such third party to remedy such interference within seventy-two (72) hours after receipt of notice or cease operation of such improvement until such interference can be eliminated, and if such interference is not eliminated within said seventy-two (72) hour period, Licensor shall take reasonable steps to eliminate such interference, including, but not limited to, terminating the occupancy agreement of such third party. Licensee shall be responsible for resolving any frequency of interference resulting from any third parties not licensed by the Licensor.

6.3 Should Licensor, Licensee, or other authorized users require access to the Pole and such access is restricted as a result of Licensor's or Licensee's operational equipment, Licensee and Licensor shall work cooperatively to develop and support access requirements. Work shall be performed in accordance with Licensor's safety standards, which may require temporarily ceasing operations Facility(ies) to comply with such standards.

7.0 UNAUTHORIZED ATTACHMENTS

7.1 If any Facility(ies) are attached to Poles for which the Licensee has no license, Licensor may, without prejudice to its other rights or remedies under this Agreement (including termination) or otherwise available at law, impose an application fee and design survey costs and any resulting costs for Make Ready Work and require Licensee to submit in writing, within fifteen (15) days after receipt of written notification from Licensor of the unauthorized Facility(ies), an Application for Pole Attachment License. If such application is not received by Licensor within the specified time period, Licensee shall remove the unauthorized Facility(ies) within fifteen (15) days of the final date for submitting the required application, or Licensor may, at the Licensee's expense, remove Licensee's facilities without liability to the Licensor. For the purpose of determining the applicable rental charge, absent satisfactory evidence on the contrary, the unauthorized attachment shall be deemed as having existed for a period of five (5) years or since the date of the last counting audit whichever is less, plus interest, whether or not Licensee is permitted to continue the attachment on the Pole.

7.2 In addition to the remedies described above, Licensor expressly retains all other rights and remedies available at law related to unauthorized Facility(ies) on Poles.

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7.3 No act or failure to act by the Licensor with regard to any unauthorized Facility(ies) shall not be deemed as authorization of the attachment; and, if any license authorizing attachment of the Facilities should be subsequently issued, such license authorization will not operate retroactively or constitute a waiver by the Licensor of any rights under this Agreement or otherwise at law.

8.0 COSTS

8.1 Licensee shall reimburse Licensor for any and all costs of work performed by Licensor in support Licensee's application, the design, installation, and maintenance of Licensee's Facility(ies) as provided under this Agreement.

8.2 **Field Survey Fees.** Prior to the performance of any Field Survey required by this Agreement, Licensee shall authorize Licensor to perform the required Field Survey and Licensee shall make payment to Licensor in an amount specified by Licensor in the Estimate for Field Survey attached as Exhibit Two, Form B-1. Such specified amount shall be sufficient to cover Licensor's estimated cost to perform and complete the required Field Survey. The Parties agree that after Licensor completes the Field Survey identified in Licensor's cost estimate, there shall be no adjustment of Licensee's payment to Licensor's actual costs to perform and complete the Field Survey, whether Licensor's actual costs are more or less than the estimated costs paid by Licensee.

8.3 **Make-Ready Work Fees.** Prior to Licensor's performance of any Make-Ready Work, Licensee shall authorize Licensor to perform the required Make-Ready Work and Licensee shall make an advance payment to Licensor in an amount specified by Licensor in the Make-Ready Work Estimate attached as Exhibit Two, Form B-2. Such specified amount shall be sufficient to cover Licensor's estimated cost to complete the required Make-Ready Work. The Parties agree that after Licensor completes the Make-Ready Work identified in Licensor's cost estimate, there shall be no adjustment of Licensee's payment to Licensor's actual costs for completion of the Make-Ready Work, whether Licensor's actual costs are more or less than the estimated costs paid by Licensee.

8.4 All survey and make-ready costs that are required by a Joint Owner or other existing authorized user(s) in connection with Facilities shall be paid by the Licensee directly to the Joint Owner(s) or existing authorized user(s).

8.5 Electric service costs for each Facility shall be metered and billed per the applicable Licensor tariff for electric service and are in addition to the annual attachment fee.

8.6 All reimbursable costs of the Licensor shall be invoiced by Licensor to Licensee and paid by Licensee prior to the start of any work by National Grid.

8.7 Licensee shall remit payment to Licensor which must be received by the Licensor within thirty (30) days of the invoice date. Late fees of 1.5 percent per month will be applied to all outstanding balances in excess of thirty (30) days. Failure to pay such costs by the specified payment date shall constitute a default under this Agreement.

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9.0 ATTACHMENT FEES

9.1 The annual attachment fee payable to Licensor by Licensee for any Facility(ies) attached to Poles is set forth under Exhibit Five. Licensee shall be liable for all attachment related fees owed to Joint Owner(s).

9.2 The attachment fee will be recalculated annually. The annual attachment fee shall be developed by using the Licensor's annual carrying charge rate and the average book investment in wood poles at fiscal year-end.

9.3 The attachment fee for each new Attachment shall commence on the first day of the month in which the license is issued. First year payments shall be prorated for the remainder of the billing period ending December 31st. Annual attachment fees shall be due and payable annually in advance on January 1st each year.

9.4 Payment to Licensor must be received within thirty (30) days of the invoice date. Late fees of 1.5 percent per month will be applied to all outstanding balances in excess of thirty (30) days. Failure to pay such fees by the specified payment date shall constitute a default under this Agreement.

10.0 INSURANCE

10.1 Licensee shall carry insurance issued by an insurance carrier satisfactory to Licensor to protect the parties hereto in accordance with this Agreement. The Licensee may elect to self-insure provided that the Licensor consents and Licensee provides written notice and evidence of self-insurance (in accordance with this Section 10.1) to the Licensor prior to the installation of Facilities. In the event Licensee self-insures its obligations in accordance with this Agreement, Licensee shall provide the Licensor with a signed self-insurance letter on Licensee's letterhead, in a form provided by Licensor (which shall be provided to Licensee at Licensee's request), which fully satisfies the insurance requirements outlined under this Article 10.0.

10.2 Comprehensive or Commercial General Liability Insurance, including Contractual Liability and Product/Completed Operations Liability covering all insurable operations required under the provisions of this Agreement and, where applicable, coverage for damage caused by any explosion or collapse with the following minimum limits of liability:

Bodily Injury Liability	$5,000,000
Property Damage Liability	$5,000,000

If a combined single limit is provided, the limit shall not be less than $5,000,000 per occurrence. Licensee's insurance requirements for General Liability or Automobile Liability may be satisfied through any combination of excess liability and/or umbrella. Coverage shall include contractual liability with this Agreement and all associated agreements with respect to the Licensee's ownership of the street lights being included. If Licensee is an insured member of the Metropolitan Interlocal Insurance Association (the "MIIA"), and maintains the insurance coverages required by this Section 10.2 through such membership, the policy (or policies) require to be maintained by Licensee under this

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Section 10.2 shall be accompanied by additional insured endorsement(s), in accordance with Section 10.7, from the actual policy (or policies) that shall read "[f]ull policy limits are available for indemnity and defense coverage." Licensee shall provide to the Licensor certificates of insurance evidencing such coverage(s) with endorsements on an annual basis at the address specified in Section 22 below. Alternatively, if Licensee is not an insured member of the MIIA and maintains the insurance coverages required by this Section 10.2 through another satisfactory insurer, the policy (or policies) required to be maintained by the Licensee under this Section 10.2 shall be accompanied by additional insured endorsement policy form(s) specifically scheduling the Licensor, in accordance with Section 10.7, as an additional insured(s). The Licensee shall provide to the Licensor certificates of insurance evidencing such coverage(s) with endorsements on an annual basis at the address specified in Article 22.0 below.

(a) If the Licensee does not meet the limits in this Section, an Umbrella Policy Insurance for $5,000,000 combined with Comprehensive or Commercial General Liability Insurance with lower limits may be substituted.

10.3 Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, including Employer's Liability Insurance with a minimum limit of $500,000. When applicable, coverage shall include The United States Longshoreman's and Harbor Workers' Compensation Act and the Jones Act. Proof of qualification as a self-insurer may be acceptable in lieu of a Workers' Compensation Policy.

10.4 Automobile Liability covering all owned, non-owned and hired vehicles used in connection with the work or services to be performed under this Agreement with minimum limits of:

Bodily Injury & Property Damage
Combined Single Limit - $2,000,000

10.5 Property Insurance, including coverage for fire, extended coverage, vandalism and malicious mischief, upon any Facility(ies). Licensor and Licensee hereby mutually release each other (and their respective successors or assigns) from liability and waive all right of recovery against the other for any loss or damage to their property resulting from the negligent or other unintentional acts or omissions of the other party covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

10.6 The Licensee, its contractors, and their respective insurance carrier(s) shall waive all rights of recovery against the Licensor and their directors, officers and employees, for any loss or damage covered under those policies referenced in this insurance provision, or for any required coverage that may be self-insured by the Licensee. To the extent the Licensee's and/or the Licensee's contractor's insurance carriers will not waive their right of subrogation against the Licensor, the Licensee agrees, and shall ensure that its contractors agree, to indemnify the Licensor for any subrogation activities pursued against them by the Licensee's and/or the Licensee's contractor's insurance carriers. However, this waiver

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shall not extend to the gross negligence or willful misconduct of the Licensor or their employees, subcontractors or agents.

10.7 All insurance must be effective before Licensor will authorize Licensee to proceed with installation of Facilities and shall remain in force until such Facilities have been removed from all such Poles. Licensee accepts the obligation to inform Licensor of changes in insurance or insurance carrier and/or policy on a prospective basis.

10.8 Licensee shall submit to Licensor original certificates of insurance including renewal thereof, by each company insuring Licensee to the effect that it has insured Licensee for all liabilities of Licensee covered by this Agreement; and that such certificates will name Licensor as an additional insured under the General Liability, Automobile Liability and if applicable, Umbrella (Excess Liability) policies and that it will not cancel or change any such policy of insurance issued to Licensee except after the giving of not less than thirty (30) days' written notice to Licensor. Licensee shall also notify and send copies to Licensor of any policies maintained under this Article 10.0 written on a "claims-made" basis. The following language shall be used when referencing the additional insured status of Licensor: "National Grid USA, its direct and indirect parents, subsidiaries and affiliates, shall be named as additional insureds."

10.9 Licensee shall require all of its contractors to carry insurance which meets the requirements specified under this Article 10.0 of this Agreement, and to name Licensor as an additional insured. Upon request by the Licensor, the Licensee shall provide to the Licensor certificates of insurance evidencing such coverage.

11.0 ACCESS TO THE ELECTRIC SPACE

11.1 **Scheduled installation and maintenance of Licensee Facilities.** Licensee shall provide written notice to Licensor of all contractors proposed to work within the Electric Space, for its review and approval, together with a summary of work to be completed and proposed work schedule, at least ten (10) business days prior to commencement of any installation, maintenance, or modification of any Facility(ies). No work shall commence until Licensor provides its approval of such contractors, summary of work, and work schedule.

11.2 **Emergency maintenance of Licensee Facilities Located in the Electric Space.** - In the event that Licensee requires emergency access to any Facility(ies) located in the Electric Space, Licensee shall provide Licensor prior notice at:

National Grid: (800)-322-3223

This is a 24-hour, 7-day per week emergency notification number. Calls shall be directed to the Supervisor on Duty, and the caller should be able to provide the following:

1. Name of Company making report;
2. Location reporting problem;
3. Name of contact person reporting problem;
4. Telephone number to call back with progress report;
5. Description of the problem in as much detail as possible;

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6. Time and date the problem occurred or began;
7. Proposed corrective actions; and
8. If appropriate, a statement that **"This is an emergency"** and that a problem presents a jeopardy situation to the physical plant of National Grid, Licensee or others as the case may be.

12.0 COMPLIANCE WITH LAWS

12.1 Licensee shall comply with all applicable Federal, State, and local laws, ordinances, rules, regulations, permits, licenses, and requirements thereunder, in connection with the performance of its activities under this Agreement.

12.2 The Licensee shall be solely responsible and assume all liability for the safety and supervision of its employees. The Licensee shall establish and effectively and continuously implement a safety program that includes both occupational and process safety as applicable. The Licensee shall, and shall require its subcontractors and their employees to comply with all applicable Federal, state and local safety directives, requirements, rules, regulations, laws and ordinances, whether the same are in force upon the execution of the Agreement or may in the future be passed, enacted or directed, including without limitation, compliance with the safety regulations and standards adopted under the Occupational Safety and Health Act of 1970 (OSHA), as amended from time to time the current editions and any subsequent revisions of the National Electric Safety Code (NESC). The Licensee shall supervise its personnel to determine and enforce compliance with the above provisions.

12.3 Licensee shall indemnify and save harmless Licensor, its parents, affiliates, officers, directors, employees, agents, successors, and assigns, from and against any and all direct and indirect costs, expenses, damages, and liability resulting from alleged or actual violations of said laws, ordinances, rules, regulations, permits, and licenses by Licensee or its contractors or subcontractors.

12.4 If Licensee observes that any requirement specified in this Agreement is at variance with any governing laws, ordinances, rules, regulations, permits, or license, Licensee shall promptly notify Licensor in writing before incurring any further liability, expense, or obligation for the Licensee or the Licensor.

12.5 Licensee shall inform each Licensee employee, agent, or contractor working on or about Facilities, energized or electric supply equipment and the associated lines, of the safety rules governing the employee's conduct while so engaged.

13.0 INDEMNIFICATION

13.1 Licensor reserves to itself, its successors and assigns, the right to locate and maintain its Poles and to operate Licensor's facilities in conjunction therewith in such a manner as will best enable Licensor to fulfill its electric service obligations and requirements. Licensor shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's services arising in any manner out of the use of Licensor's

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Poles, except to the extent caused by Licensor's negligence or to the extent otherwise required by Licensor's tariffs.

13.2 Licensee shall be liable for any damages it causes to the facilities of Licensor and of others attached to Poles, and Licensee assumes all responsibility for any and all loss from such damage caused by Licensee or any of its agents, contractors, servants or employees. Licensee shall make an immediate report to Licensor and any Joint Owner or authorized user of the occurrence of any such damage and agrees to reimburse the respective parties for all costs incurred by Licensor and/or Joint Owners or authorized users in making repairs to their respective facilities.

13.3 Except to the extent caused by the negligence of Licensor, and except as the Commonwealth of Massachusetts' cities and towns are precluded by Section 7 of Article 2 of the Amendments to the Massachusetts Constitution from pledging their credit without prior legislative authority, Licensee shall, to the fullest extent allowed by law and to the full extent of Licensee's insurance coverage (under which Licensor shall be named an additional insured), and shall cause any party performing work in connection with this Agreement on behalf of Licensee to, indemnify, save harmless, and defend Licensor, against and from any and all liabilities, claims, suits, fines, penalties, damages, losses, fees (including reasonable attorneys' fees), costs, and expenses (including reasonable costs and expenses incurred to enforce this indemnity) (hereinafter "Claims") arising from or in connection with Licensee's installation, operation, maintenance, or removal of Facilities including, but not limited to, those Claims which may be imposed upon, incurred by, or asserted against Licensor, by reason of:

(a) any work or action done upon the Poles licensed hereunder or any part thereof performed by Licensee or any of its agents, contractors, servants, or employees;
(b) any use, occupation, condition, operation of said Poles or any part thereof by Licensee or any of its agents, contractors, servants, or employees;
(c) any act or omission on the part of Licensee or any of its agents, contractors, servants, or employees, for which Licensor may be found liable;
(d) any accident, injury (including, but not limited to, death), or damage to any person or property occurring upon said Poles or any part thereof or arising out of any use thereof by Licensee or any of its agents, contractors, servants, or employees, except where such work is performed by Licensor;
(e) any failure on the part of Licensee to perform or comply with any of the covenants, agreements, terms, or conditions contained in this Agreement;
(f) payments made under any Workers' Compensation Law or under any plan for employee disability and death benefits arising out of any use of the Poles by Licensee or any of its agents, contractors, servants, employees; or
(g) by the installation, operation, maintenance, presence, use, occupancy, or removal of Licensee's Facilities by Licensee or any of its agents, contractors, servants, or employees or by their proximity to the facilities of other parties attached to Licensor's Poles, including without limitation, taxes, special charges by others, and from and against all claims and demands for infringement of patents with respect to the manufacture, use, and operation of Licensee's Facilities in combination with Poles, or otherwise.

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13.4 Furthermore, Licensee understands and agrees it is responsible for any and all costs and expenses incurred by Licensor to enforce this indemnification provision.

13.5 The obligations set forth in this Article shall survive completion of the work, termination, or expiration of this Agreement.

14.0 LIMITATION OF LIABILITY

14.1 The Licensor makes no warranties, representations, guarantees or promises in connection herewith or therewith, whether statutory, oral, written, express, or implied as to the present or future strength, condition, or state of any Facilities, Poles, wires, apparatus or otherwise in connection with any Facility(ies) or this Agreement. The Licensee, or its contractors, agents and representatives performing any attachment work, shall be responsible and liable for testing or observing the Poles to determine whether the Poles are safe to access and ascend. If the Licensee questions the integrity or safety of any Pole or if the Pole is marked as unsafe, the Licensee shall refrain from accessing, ascending, or handling the Pole in any manner whatsoever and shall notify or confirm said condition with Licensor. Should the Licensee, or its contractor, agent or representative decide, in its sole judgment, access a Pole (including, without limitation, Poles which are marked unsafe or appear to be unsafe), the Licensee, not Licensor or its affiliates, shall assume all risk of loss, liability and damages (including injury to any person(s) (including death) or property), and the Licensee shall indemnify, defend, release and hold harmless Licensor, its affiliates and the Licensor's and its affiliate's successors, assigns, officers, agents, representatives as indicated herein.

14.2 Licensor, the Licensor's affiliates, and their respective officers, directors, employees, representatives and contractors shall not be liable to Licensee for any indirect, consequential, punitive, incidental, special, or exemplary damages in connection with any attachment, the Facilities, any Pole, or this Agreement, including, without limitation, the condition, design, engineering, installation, maintenance, construction, location, operation of, or failure of operation of, the Facilities, under any theory of law that is now or may in the future be in effect, including without limitation: contract, tort, strict liability, or negligence. Furthermore, Licensor shall not be liable for any data or message communicated over Licensee EV Charging Station Facilities.

14.3 Licensee expressly acknowledges that Licensee's Facilities may be exposed to many risks beyond the reasonable control of Licensor, including acts of God or the public enemy, such as but not limited to, wind, rain, sleet, ice, floods, fire, riots, sabotage, expropriation, or confiscation of facilities. Licensee shall assume all risk of loss to any Facility(ies) that may arise in connection with these hazards with no liability to Licensor.

15.0 DISPUTE RESOLUTION

15.1 The Parties shall endeavor to negotiate and resolve in good faith any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof (each, a "**Dispute**"), under the provisions of this Section. The procedures set forth in this Article shall be the exclusive mechanism for resolving any Dispute that may arise from time to time.

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15.2 The Parties shall first attempt in good faith to resolve any Dispute by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) days after one Party provides notice to the other Party of such Dispute ("**Dispute Notice**"), either Party may, by written notice to the other Party ("**Escalation to Executive Notice**"), refer such dispute to the executives of each Party (or to such other person of equivalent or superior position designated by such Party in a written Notice to the other party, "**Executive(s)**").

15.3 If the Executives cannot resolve the Dispute within one-hundred twenty (120) days after the date of the Escalation to Executive Notice, either Party may file suit in a court of competent jurisdiction.

15.4 Each Party shall continue to perform its obligations under this Agreement during the resolution process of any Dispute unless and until such obligations are terminated by the termination or expiration of this Agreement.

16.0 HAZARD OR EMERGENCY

16.1 Licensee acknowledges that all work, including but not limited to any construction, maintenance, or removal activities, to be performed in connection with this Agreement, may pose great hazard to human beings and personal property. Licensee warrants that it will make its employees, agents, and contractors aware of these hazards as well as the potential consequences associated with exposure to these hazards. Furthermore, Licensee warrants that it has full responsibility for any and all injury and damages to persons or property resulting from these hazards and any failure by Licensee to advise its employees, agents, or contractors as required herein.

16.2 All Parties shall work cooperatively in the case of an emergency to restore service to their respective customers.

16.3 When Licensor deems it an immediate threat to safety and/or an emergency exists, it may rearrange, transfer, or remove Licensee's Facility(ies) to Licensor's poles at Licensee's expense. If Licensor rearranges, transfers, or removes Licensee's Facility(ies) Licensor will invoice Licensee for Licensor's cost to perform the work and Licensee will pay such invoice within thirty (30) days of receipt. Licensor shall make reasonable efforts to contact Licensee as circumstances permit.

17.0 TERM

17.1 Unless terminated pursuant to Article 18.0 below, this Agreement shall remain in effect for a term of five (5) years from the date hereof and shall extend thereafter until terminated by either party with at least six (6) months written notice to the other party.

17.2 Termination of this Agreement or any licenses issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination.

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18.0 TERMINATION

18.1 Licensor shall have the right to terminate any license issue hereunder, if:

(a) Licensee's Facilities are installed, operated, used, maintained, and/or modified in violation of any law or in aid of any unlawful act or undertaking. Licensor agrees not to terminate any license under this provision for a period of thirty (30) days following written notice to Licensee of Licensor's intention to terminate pursuant to this section, provided that Licensee ceases operations at the location of the Facility(ies) and is making diligent efforts to correct the violation(s). Licensee shall provide Licensor with prompt written notice of any such action under which operation or use of the Facility(ies) is denied, revoked, or canceled or reinstated.

(b) Any authorization which may be required by any Federal and/or state governmental and/or regulatory authority with respect to the installation, operation, use, maintenance, and/or modification of the Facilities is denied, revoked, or canceled, Licensor agrees not to terminate any license under this provision for a period of one hundred eighty (180) days after receipt of notice by the appropriate authority provided that Licensee ceases operations at the site and is making diligent efforts to obtain or reinstate such authorization. Licensee shall provide Licensor with prompt written notice of any such action under which operation or use of the Facility(ies) is denied, revoked, or canceled or reinstated.

18.2 Upon termination of any license, neither Party will owe any further obligations to the other under such license, except for the indemnities and hold harmless provisions contained throughout this Agreement, Licensee's obligation to reimburse Licensor for all costs, expenses, and losses properly incurred by Licensor pursuant to such license and Licensee's obligations under Section 18.3 below.

18.3 Should the Licensee desire to terminate a license it shall submit to the Licensor for its approval a written request for termination of the license with specific reference to the license to be terminated, the location of the associated Station Facility(ies), its removal plan and schedule at least sixty (60) days prior to the requested date of termination by the Licensee. All Facility(ies) shall be removed within sixty (60) days from the date of the Licensor's approval. Any notifications or obligations to any other party regarding the removal of any Facility(ies) shall be the responsibility of the Licensee.

18.4 In the event of termination of this Agreement, Licensee shall within sixty (60) days from the date of termination submit a plan and schedule to Licensor under which Licensee will remove, or have its Facility(ies) removed, within twelve (12) months from date of termination from Poles; provided however, that Licensee shall be liable for and pay all fees pursuant to the terms of this Agreement to Licensor until Licensee's Facility(ies) are removed. In the event that Licensee fails to vacate the Pole or fails to remove all of its Facility(ies), Licensor shall have the right, after giving at least ten (10) days prior written notice to Licensee, to remove the remaining Facility(ies), in which event such Facility(ies) may be retained by Licensor as its property without accounting to Licensee therefor, and the expense of such removal and repairs shall be charged to and paid by Licensee without credit for the value, if any, of such Facility(ies).

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19.0 **AUTHORIZATION NOT EXCLUSIVE**

Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any Pole covered by this Agreement.

20.0 ASSIGNMENT

20.1 Licensee shall not assign or transfer this Agreement, or any authorization granted hereunder, and this Agreement shall not inure to the benefit of Licensee's successors, without the prior written consent of Licensor, which shall not be unreasonably, delayed, or withheld. Notwithstanding, Licensee shall have the right to assign its entire interest under this Agreement to an entity owned or controlled by Licensee, or to any successor to Licensee by purchase, merger, consolidation, or reorganization, or to an affiliate that has the power to direct or cause the direction of management and policies of Licensee, or to an affiliate entity with which Licensee, or the controlling owners of Licensee, have the power to direct or cause the direction of management and policies of such affiliate (hereafter collectively referred to as a "Licensee Permitted Transfer") without the consent of Licensor; provided that (a) Licensee is not then in default under this Agreement; (b) if such proposed assignee is a successor to Licensee by purchase, said proposed assignee shall acquire all or substantially all of Licensee's stock or assets or, if such proposed assignee is a successor to Licensee by merger, consolidation, or reorganization, the continuing or surviving corporation shall own all or substantially all of the assets of Licensee; (c) such proposed assignee maintains at the time of assignment, as demonstrated by current financial statements provided to Licensor, a financial position reasonably demonstrating the ability of such assignee to meet and perform the obligations of Licensee under this Agreement; and (d) such assignee assumes all of Licensee's obligations hereunder. Licensee shall give Licensor written notice not later than sixty (60) days following the effective date of a Licensee Permitted Transfer. As used herein, the term "owned or controlled" shall mean ownership of more than fifty percent (50%) of the equity interest or more than fifty percent (50%) of the voting rights of the applicable entity. Any assignment or transfer by Licensee of any of its rights or obligations under this Agreement, other than a Licensee Permitted Transfer, shall be void without Licensor's prior written consent.

20.2 In the event such consent or consents are granted by Licensor, then this Agreement shall extend to and bind the successors and assigns of the parties hereto.

20.3 Pole space licensed hereunder is for Licensee's use only, and Licensee shall not lease, sublicense, share with, convey or resell to others any such space or rights granted hereunder, except that Licensee may, (i) allow equipment of others to be placed within cabinets or boxes of Licensee placed on Poles of Licensor, or (ii) allow equipment of others to be placed on Poles of Licensor below the lowest communications cable on such Pole. If Licensee allows the placement of equipment of others within cabinets or boxes of Licensee placed on Poles of Licensor, Licensee's responsibilities under this Agreement shall be, in all respects, as though such equipment belonged to Licensee.

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21.0 PROTECTION AGAINST LIENS ON PROPERTY

21.1 Licensee will keep the property free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Licensee and shall indemnify, defend, and hold harmless Licensor, its parents, affiliates, officers, directors, employees, agents, successors, and assigns, from all claims, demands, costs, and liabilities, including reasonable attorney's fees and costs, in connection with or arising out of any such lien or claim of lien. Licensee will cause any such lien imposed on the property to be released of record by payment or posting of a proper bond or other instrument of financial security in form and content acceptable to Licensor within forty-five (45) days after receipt by Licensee of notice of the filing of such lien.

22.0 NOTICES

All notices, requests, demands, and other communications hereunder will be in writing and will be deemed given if emailed and followed up with originals via US mail, personally delivered, sent by an overnight courier provided proof of service is furnished therefor, or if mailed, certified mail, return receipt requested, to the parties at the following addresses:

If to Licensor:
National Grid
Attention: Joy Banks
Manager, Third Party Attachments
40 Sylvan Road
Waltham, Massachusetts 02451
joy.banks@nationalgrid.com
617-949-6134

with a copy to:
National Grid
Attention: Commercial Legal
Legal Department
40 Sylvan Road
Waltham, MA 02451

If to Licensee:
OTELCO
Attention: Debbie Brill
56 Campus Drive
New Gloucester, ME 04260
debbie.brill@otelco.com
207-688-8020

with a copy to:
OTELCO
Attention: Legal Department
396 Griffin Road
Bangor, ME 04401
legal@otelco.com

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23.0 GENERAL PROVISIONS

23.1 **Access to Records.** Licensor will, upon written request by Licensee, subject to confidentiality provisions within the Non-Disclosure Agreement, dated February 23, 2011, provide available information and copies of documents in its files pertinent to the nature of the rights Licensor possesses. All costs, fees, and expenses (including labor) of providing such information and reproducing documents shall be paid by Licensee.

23.2 **Contractor Personnel.** In the event that the Company believes, in its sole judgment, that any of the Contractor's personnel are objectionable, the Company shall so notify the Contractor, whereupon the Contractor shall promptly investigate and take appropriate corrective action including, where requested by the Company, removal of such personnel and replacement with personnel acceptable to the Company.

23.3 **Consent and Waivers.** Any consent or waiver of compliance with any provision of this Agreement shall be effective only if in writing and signed by an authorized representative of the Party purported to be bound thereby, and then such consent or waiver shall be effective only in the specific instance and for the specific purpose for which it is given. No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial waiver thereof preclude any other exercise of any other right, power or privilege hereunder.

23.4 **Failure to Enforce.** Failure of Licensor to enforce or require compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

23.5 **Amendment.** This Agreement may be amended or modified only by an instrument in writing signed by authorized representatives of the Parties.

23.6 **Governing Law/Consent to Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of the State of Massachusetts without regard to the principles of the conflict of laws contained therein. Each Party hereby submits to the personal and subject matter jurisdiction of the courts of the State of Massachusetts for the purpose of interpretation and enforcement of this Agreement.

23.7 **Severability.** In the event that any provision or part of this Agreement or the application thereof to any party or circumstance is deemed invalid, against public policy, void, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions or parts hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

23.8 **No Third-Party Beneficiaries.** The provisions of this Agreement are for the benefit only of the parties hereto, and the parties do not intend to create or to confer any benefits upon any persons, firms, or entities not a party to this Agreement, and no third party shall have the right to enforce the provisions hereof.

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23.9 **Entire Agreement.** The parties have freely entered into this Agreement and agree to each of its terms without reservation. Paragraph headings are for the convenience of the parties only and are not to be construed as binding under this Agreement. This Agreement constitutes the entire Agreement between Licensor and Licensee, and all previous representations either oral or written, (including, but not limited to any and all previous license agreements insofar as Licensee is concerned except as to liabilities accrued, if any) are hereby annulled and superseded.

23.10 **Survival.** All rights and obligations hereunder granted or incurred prior to and which by their nature would continue beyond the cancellation, termination, or expiration of this Agreement shall survive such cancellation, termination, or expiration.

{SIGNATURES ARE ON THE FOLLOWING PAGE.}

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IN WITNESS WHEREOF, the parties have caused this Aerial Attachment Agreement to be duly executed as of the day and year first written above.

MASSACHUSETTS ELECTRIC COMPANY

By: _____

Title: _____

Date: _____

CRC COMMUNICATIONS LLC DBA OTELCO

By: _____

Title: Vice President of Network Operations

Date: 1/19/2022

EXHIBITS:

Exhibit One Municipalities Covered by Agreement

Exhibit Two Administrative Forms and Notices

Exhibit Three Licensee Lease Exhibit (Drawings and Specifications)

Exhibit Four Licensor Standard TBD

Exhibit Five Pole Attachment Fee Schedule

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Exhibit Two

Administrative Forms and Notices

Agreement Number ___05-2103_____ **Form A-1**
Application Number _____

APPLICATION FOR POLE ATTACHMENT LICENSE

DATE: _____

LICENSEE: _____

Street Address: _____

City, State, Zip Code: _____

In accordance with the terms and conditions of the License Agreement between us, dated _____, _____ application is hereby made for a license to make _____ Attachments to JO poles and _____ Attachments to SO poles located as indicated on the attached Form A-2.

LICENSEE: _____

By (Print Name): _____

Signature: _____

Title: _____

Telephone Number: _____

POLE ATTACHMENT LICENSE

Pole Attachment License Number _____ is hereby granted to make the attachments described in this application as _____ Attachments to JO poles and _____ Attachments to SO poles located as indicated on the attached Form A-2.

DATE: _____

LICENSOR: _____

By (Print Name): _____

Signature: _____

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Title: _____

Telephone Number: _____

NOTES:

1. Applications shall be submitted to Licensor.
2. Applications to be numbered in ascending order by municipality.
3. Licensor will process in order of application numbers assigned by Licensee.

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Agreement Number __05-2103_____ **Form A-2**
Application Number _____

POLE DETAILS

LICENSEE: _____

Municipality: _____
(Note: Provide separate sheets for each municipality)

Pole Nos.	Location	Attachment Description
		Each Supporting Member: Description: _____ Diameter: _____ inches Weight: _____ lbs./ft. RBS: _____ lbs. NESC Heavy Tension: _____ $lbs.^2$ **Each Supported Member:** Diameter: _____ inches Weight: _____ lbs./ft.

_____ (Yes/No) LICENSEE HEREBY REQUESTS LICENSOR TO PROVIDE AN ITEMIZED ESTIMATE OF POLE MAKE READY WORK REQUIRED AND ASSOCIATED CHARGES (APPENDIX III FORM C).

DATE: _____

LICENSEE: _____

By (Print Name): _____

Signature: _____

Title: _____

Telephone Number: _____

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Agreement Number _____05-2103___
Application/Request No. _____

Form B-1

ESTIMATE FOR FIELD SURVEY

_____
(Licensee)

In accordance with the Aerial License Agreement Number _____, dated _____, ____, the following is a summary of the charges which will apply to complete a field survey covering Application/Request Number _____.

Total	Poles	Rate/Unit	Total
Field Survey	_____	$65.40 /pole	$_____
Fixed Administrative Costs		$265.00 /application	$_____
		TOTAL	$_____

If you wish us to complete the required field survey, please sign this copy below and return with an advance payment in the amount of $_____.

DATE: _____

LICENSOR: _____

By (Print Name): _____

Signature: _____

Title: _____

Telephone Number: _____

AUTHORIZATION FOR FIELD SURVEY

The required field survey covering Application/Request Number _____ is authorized and the costs therefore will be paid to Licensor in accordance with Appendix I to License Agreement.

DATE: _____

LICENSEE: _____

By (Print Name): _____

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Signature: _____

Title: _____

Telephone Number: _____

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Agreement Number ___05-2103_____ **Form B-2**
Application/Request No. _____

MAKE-READY WORK ESTIMATE

_____
(Licensee)

Field survey work associated with your Application/Request Number _____ dated _____, ____, for attachment to poles has been completed. The following is a summary of the charges which will apply to complete the required Make-Ready Work.

TOTAL MAKE-READY CHARGES $ _____

Attached as requested, is an itemized description (Form C) of required Make-Ready Work. A cost estimate of associated Make-Ready Work is also attached. If you wish us to complete the required Make-Ready Work, please sign this copy below and return with an advance payment in the amount of $_____.

DATE: _____

LICENSOR: _____

By (Print Name): _____

Signature: _____

Title: _____

Telephone Number: _____

AUTHORIZATION FOR MAKE-READY WORK

The Make-Ready Work associated with Application/Request Number _____ is authorized and the costs therefore will be paid to Licensor in accordance with Appendix I to License Agreement.

DATE: _____

LICENSEE: _____

By (Print Name): _____

Signature: _____

Title: _____

Telephone Number: _____

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Agreement Number ___05-2103_____ **Form C**
Application/Request No. _____

ITEMIZED MAKE-READY WORK

Sheet _____ of _____ Licensee: _____
Prepared By: Municipality:
Date Prepared: License Application No.: _____

POLE INFORMATION		MAKE-READY WORK REQUIREMENTS	
Licensor Pole No.	**Location (Street)**	**Qty.**	**Description of Work**

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Exhibit Three

Licensee Attachments Lease Exhibit
(Drawings and Specification)

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Exhibit Four

Licensor Standards
(Fiber Attachments to Wood Poles)

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Exhibit Five

Attachments to
Massachusetts Electric Company d/b/a National Grid Wood Poles
Fee Schedule

Rate Year	Solely-Owned Fee	Jointly-Owned Fee
2020	$15.50	$7.75
2021	$15.50	$7.75
2022	$14.30	$7.15

GoNetspeed

Exhibit 4

Pre-Filed Testimony of

Dr. Lawrence M. Slavin

D.T.C. 22-4

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

CRC Communications LLC, d/b/a OTELCO, Complainant, v. Massachusetts Electric Company d/b/a National Grid, and Verizon New England Inc., Respondents.	D.T.C. 22-4

PRE-FILED TESTIMONY OF DR. LAWRENCE M. SLAVIN ON BEHALF OF CRC COMMUNICATIONS LLC, d/b/a OTELCO

July 11, 2021

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

PRE-FILED TESTIMONY OF
LAWRENCE M. SLAVIN, PH. D.
ON BEHALF OF
CRC COMMUNICATIONS LLC, d/b/a OTELCO

I. INTRODUCTION

A. WITNESS IDENTIFICATION

Q. Please state your name, title and business address.

A. My name is Dr. Lawrence M. Slavin. I am the principal of Outside Plant Consulting Services, Inc., a private practice specializing in standards, guidelines, and construction methods for outside plant facilities in the telecommunications and power industries. My address is Outside Plant Consulting Services, Inc., 15 Lenape Avenue, Rockaway, NJ 07866.

Q. Please summarize your educational and professional experience and qualifications.

A. I received a B.S. in Mechanical Engineering from The Cooper Union for the Advancement of Science and Art. I then pursued an M.S. in Engineering Mechanics at New York University, where I also received my Ph.D. in Mechanical Engineering. My professional background includes a wide range of consulting experiences in various roles in the telecommunications industry, including investigation of issues related to the power industry. Among my many activities, I have provided technical support for American Society of Civil Engineers (ASCE) Manual No. 111, "Pole Reliability Based Design of Utility Pole Structures."

I currently represent the national telephone industry, via the Alliance for Telecommunications Industry Solutions, on the National Electrical Safety Code (NESC) Committee. I actively participate on various NESC subcommittees, including the relevant Subcommittee 4 (Overhead Lines – Clearances) and Subcommittee 5 (Overhead Lines – Strength & Loading), as well as on Subcommittee 7 (Underground Lines), Interpretations Subcommittee, Executive Subcommittee and Main Committee. I also serve on Accredited Standards Committee 05, responsible for several utility standards, including the relevant *ANSI O5.1, Wood Poles, Specifications and Dimensions.*

Additionally, I have written several articles in industry journals and publications, including recently in IAEI (International Association of Electrical Inspector) Magazine, *Highlights of the next edition of the National Electrical Safety Code*, and have chaired panel sessions for the benefit of the industry on behalf of the NESC. I am author of the recently published book *Overhead Distribution Lines – Design and Applications*, by Wiley–IEEE, and am a contributor to the *Telcordia Blue Book – Manual of Construction Procedures*. Additional details summarizing my background, training, and professional activities are attached to my testimony as Exhibit A.

In addition to my work on the NESC Committee, I have been, and/or continue to be, involved in several state regulatory commission proceedings involving various aspects of pole attachments and clearance and loading requirements, including matters arising in Florida, Connecticut, Georgia, and California.

B. PURPOSE OF TESTIMONY

Q. Please explain the purpose of your testimony.

A. I was asked by representatives of OTELCO to discuss the practice of pole "boxing" (or "opposite side" construction), as it relates to efficient construction techniques for overhead communication lines and compliance with appropriate safety codes and industry practices. The ability to use this method, as opposed to the installation of a new, larger pole, increases the feasibility of providing broadband services to the public. Verizon and National Grid, however, have disallowed this practice to OTELCO, resulting in this formal complaint proceeding. In their responses, Verizon and National Grid claim there are issues related to boxing, including safety and complications to future work. My testimony addresses these issues.

C. SUMMARY OF TESTIMONY

Q. Would you briefly summarize the areas upon which you are testifying?

A. My testimony addresses:

(1) The benefits of using boxing (or opposite side construction) to avoid costly make-ready, including pole replacements;

(2) The concerns raised by Verizon and National Grid pertaining to boxing (or opposite side construction), including potentially more complicated pole removal and issues related to climbing and safety; and

(3) Technical issues pertaining to attaching communications lines below Verizon.

III. TESTIMONY

Q. Could you explain how the NESC and safety considerations apply generally to pole attachments?

A. Yes. As stated in the Abstract of the NESC (2017):

> This Code covers basic provisions for safeguarding of persons from hazards arising from the installation, operation, or maintenance of (1) conductors and equipment in electric supply stations, and (2) overhead and underground electric supply and communication lines.

The NESC is widely recognized as a "basic" safety code. While a utility may decide to exceed the rules of the NESC in order to create an even "safer" environment, it is also recognized that it is necessary to balance various issues when attempting to provide essential (lifeline) services to the public. Such services include electric supply and communications, including the increasing need for broadband. Accordingly, the use of joint-use construction is, and always has been, a balance between the need to provide as safe a working environment as possible and the ability to practically deliver critical electric supply and communications services. Indeed, it would be considerably "safer" to utilize separate structures for delivering these two types of services, rather than combine them on the same structure. However, in most cases having two separate structures for electric and communications facilities is not a viable solution, as evidenced by the extensive joint-use of poles throughout the country.

Q. Please explain the meaning of a "boxing" or "opposite side" construction.

A. The practice of pole boxing refers to the installation of cables or wires running in the longitudinal direction, along the line, on opposite sides of the pole, as illustrated in Figure 1:

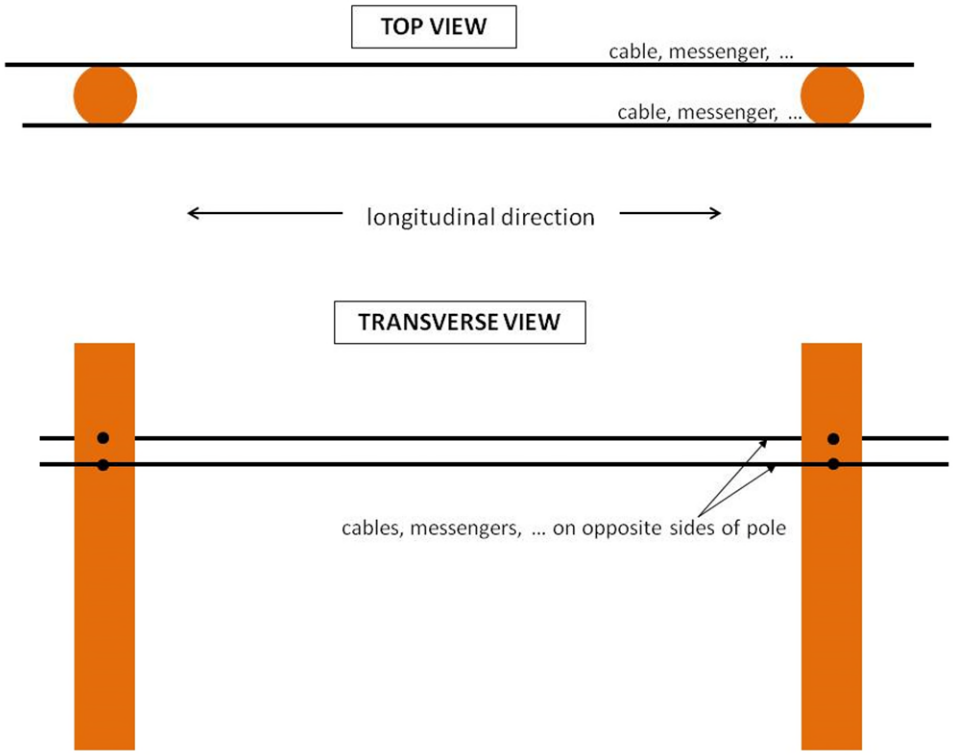


Figure 1

Because of the potential benefits in its usage to an attacher, albeit with possible inconveniences to both the party using it as well as other parties, including the pole owner, this practice has been somewhat controversial.

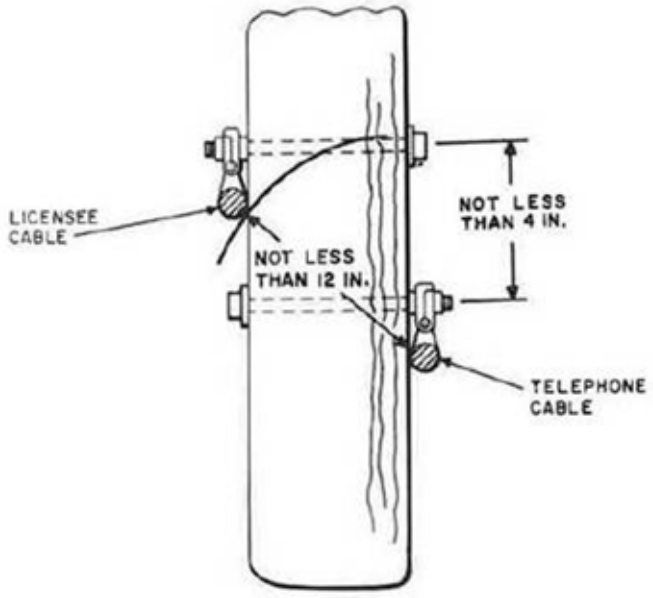
Q. What are the benefits of opposite side construction?

A. The installation of longitudinal runs of cables on opposite sides of the poles – i.e., boxing – is an efficient, cost-effective means of adding communications cables to existing poles, and

may be used to avoid the immediate need for an expensive pole replacement operation. The procedure is consistent with the safety rules of the NESC, as well as the industry practices provided in the Telcordia *Blue Book – Manual of Construction Procedures*. It is recognized that future pole replacements, as *may* occur at some time in the future, *may* be more difficult – and possibly more expensive – to accomplish. If and when that happens, it would be incumbent upon the cost-causer (the party utilizing this practice) to incur the related incremental expenses, with an additional obligation to facilitate the operation, possibly by temporarily detaching its lines from pole(s), as necessary.

Q. In National Grid's Response to the Complaint, they argue that "boxing" would require "implementing a significant modification to National Grid's construction policies which are essential to preserving system reliability and worker and public safety." (*See* National Grid Response at p. 22.) I will ask you to address each of the points National Grid and Verizon raise concerning the practice of "boxing," but first, is "boxing" or "opposite side" construction consistent with the NESC?

A. Yes. The use of boxing is consistent with the safety rules of the NESC, as well as the industry practices provided in the Telcordia *Blue Book – Manual of Construction Procedures*. For instance, the 2017 edition of the *Blue Book* illustrates recommended spacings and clearances when cables are placed on opposite sides of the pole:



Boxing is therefore an accepted procedure and entirely appropriate when it facilitates delivery of advanced communication services, without which the provision of such services may not be feasible.

Q. Do you consider "boxing" or "opposite side" construction to be an important construction alternative for deployment of competitive broadband services?

A. Yes. As the communications industry evolves, accompanied by the increasing need for and deployment of broadband services, the ability to install the associated cables on existing infrastructure is becoming increasingly difficult. A commonly encountered issue is that of insufficient space on the utility poles, consistent with industry requirements and practices. The available space for additional communications cables on an existing pole is limited by the clearances to the ground below, required separation between communications lines and from the electric supply lines above. Within these constraints,

however, it is possible to place cables, including support messenger/strand, on opposite sides of the pole ("boxing"), as illustrated in Figure 1. This procedure may be the most practical, efficient, and cost-effective means of adding the new facilities, avoiding the considerably more difficult, time consuming and costly alternative of a pole replacement. The latter procedure encompasses the detachment of existing facilities, including electric supply and other communication lines, removal of the existing, presumably healthy, pole and the installation of a new, larger pole, followed by the reattachment of all the previously removed facilities, and finally by the installation of the originally requested lines. This pole replacement alternative is therefore a relatively complicated, expensive task, in comparison to placing the additional communications lines on the opposite side of the pole. Notably, Verizon recognizes that boxing can be an appropriate option on joint-use poles, particularly "when the use of any other available method(s) would be unreasonably costly to one or both Parties." (*See* Wolanin Affidavit Exhibit D ¶ 1.) Indeed, this is the situation presently being addressed, for which OTELCO requests such consideration.

Q. The potential for interference with the climbing space is one of the primary arguments National Grid and Verizon give against the practice of "boxing." For instance, National Grid states that "[t]he use of "boxing" techniques will usually make a pole unclimbable by electric utility workers." (*See* National Grid Response at p. 22.) How do you respond to these concerns?

A. Unfortunately, the practice of "boxing" has had negative connotations and is sometimes disallowed as an otherwise viable option for third-party attachers for the placement of their additional lines. However, the possible obstruction of the climbing space on the otherwise

unoccupied side of the pole is irrelevant in most cases due to the wide-spread usage of aerial lifts or bucket trucks, or the use of ladders in rare cases when poles are not as accessible. For example, the Maine Public Utilities Commission considers the following as an unreasonable restriction for the joint-use of utility poles:

> **Boxing.** A prohibition on boxing poles (i.e., placing cables on both the road side and the field side of a pole) which can be safely accessed by emergency equipment and bucket trucks or ladders provided that such technique complies with the requirements of *applicable codes*. [italics added]

Interestingly, the practice of boxing is compliant with the most appropriate "applicable code" – the NESC – independent of the possible use of bucket trucks or ladders. Although the NESC is not formally adopted in every state, it is generally recognized or reflected in the industry practices throughout most of the country, including territories. Rule 236G of the NESC addresses "Climbing space past longitudinal runs not on support arms," referring to cable installations as illustrated in Figure 1, and states (NESC-2017):

> Longitudinal runs on racks, or cables on messengers, are not considered as obstructing the climbing space if the location, size, and quantity of the cables permit qualified workers to climb past them.

Prior to the 2007 edition, this sentence had language that required the wires to be covered with rubber protective equipment or be otherwise guarded, before climbing past them. However, as explained in the formal response to NESC Interpretation Request 563:

> For your information, the change was made to reflect common work practices. *For the most part, workers were not covering communication cables when climbing past them and it was determined that such action was not a safety issue.* Note that energized electric facilities must be covered in accordance with Part 4 Rules for the Operation of Electric Supply and Communications Lines and Equipment. [Italics added]

It is noted that the Telcordia *Blue Book – Manual of Construction Procedures* (2017) clearly shows the use of boxing in its Figure 3-1 (Clearance Between Licensee-Owned and Communications Company), as illustrated above, as an accepted practice, referring to third-party attachments on poles, albeit with a 4-inch minimum vertical spacing between strand mounting bolts. Indeed, the *Blue Book* illustrates (Figure 5-4) an appropriate (double ended) suspension bolt for facilitating such an operation, presumably for the convenience of the ILECs (Incumbent Local Exchange Carrier) utilizing boxing for their own purposes. (Several examples of boxing by ILECs or other parties on Verizon-occupied poles are shown in the declaration of David Allen, although apparently not using this type of hardware.) The *Blue Book* is a well-respected, widely-used document in the communications industry and may be referenced in pole attachment agreements – including in the agreement in question with Verizon.

Q. **Is the use of "boxing" consistent with the clearance requirements of the NESC?**

A. Yes. Not only is the practice of boxing compliant with the rules for climbing space as specified in the NESC (Rule 236G) and the installation practices of the Telcordia Blue

Book, the resultant installation is also consistent with the clearance requirements of the NESC, regarding the separation between cables in the communication space. NESC Rule 235H does stipulate a 12-inch spacing between messengers at the pole (but can be reduced by agreement of the parties), which is properly interpreted as applying in the vertical direction. However, Rule 235D indicates that the separation must satisfy either the vertical clearance or horizontal clearance, but not both simultaneously. While this rule is not necessarily directly applicable to communication lines, the combination of NESC Rule 012C ("accepted good practice" in the absence of "particulars not specified"), NESC Table 235-1 (6-inch horizontal clearance between open communication conductors), the clearance envelope of NESC Figure 235-1, and a typical local pole diameter of approximately 10-inches (based on the ANSI O5.1 wood pole standard), indicates the resulting separations are NESC-compliant.

Figure 3-1 of the *Blue Book* is somewhat more conservative than the NESC, requiring a 12-inch clearance between the cables on opposite sides of the pole, although measured in a diagonal (radial) direction. This requirement would also be satisfied, considering the typical local pole diameter (10-inches), the required minimum 4-inch vertical bolt spacing for a third-party attachment, and gaps between the cables and the pole surface, ensured by the third-party's mounting bracket, as necessary.

Neither the NESC nor the Blue Book address the pole replacement process, but it may be assumed that reasonable precautions will be taken, as described above, possibly by temporarily detaching the lines installed on the opposite side of the pole, as necessary.

Such precautions would also presumably apply to Verizon-occupied poles already utilizing this procedure in the examples shown in the declaration of David Allen.

Q. In its Response, National Grid states that "[e]xisting communications attachments placed on one face of a pole are installed with a spacing of 12 inches from center-to-center," and argues that "[i]nstalling an additional attachment on the opposite side of the pole requires an additional hole in the pole in line with the existing holes, creating a weak spot in the pole …" (*See* National Grid Response at 22.) Do you agree with National Grid's assessment?

A. No. As I stated above, the *Blue Book* considers the boxing of third-party attachments to be an accepted practice on poles where there is a minimum 4-inch vertical spacing between strand mounting bolts. In fact, Verizon's guidelines permit strand mounting bolts to be as close as four inches. (*See* Affidavit of David L. Wolanin at Ex. B, § 3.2.3.) Notably, National Grid does not include a reference to a specification that requires a minimum spacing of 12 inches between bolt holes for attachments. The NESC, similarly, does not contain such a requirement. This is likely because the greatest bending loads and associated stresses for a distribution pole typically occur at or near the ground line, and not in the vicinity of the attachments or their bolt holes. Thus, bolt holes in the communications space are generally not a significant or critical issue.

Q. Another argument typically given against "boxing" – and one that both National Grid and Verizon put forth in their responses to OTELCO's Complaint (*see, e.g.*,

National Grid Response at p. 22; Verizon Response at p. 10) – is that it complicates the future pole replacement process. Can you respond to this criticism?

A. Yes. It is recognized that the process of boxing a pole may result in a potentially more complicated, more costly pole replacement process. Such a process, however, may occur many years in the future, and may never be an issue, depending upon other events that may occur prior to that time (e.g., undergrounding). In any case, it would be reasonable to require that the "cost-causer" (third-party attacher) reimburse the pole owner(s) for any incremental expenses, with an additional obligation to facilitate the operation, possibly by temporarily detaching its lines from pole(s), and lowering or diverting them, as necessary. On balance, this would represent a much more reasonable and equitable alternative than imposing the major delay and cost of replacing an existing, otherwise healthy pole.

Q. In the Affidavit of David L. Wolanin, he claims that "[n]one of the poles identified by Otelco in Exhibit E to the Allen Declaration is suitable for boxing," and attaches his "assessment of the circumstances of each of those poles on a pole-by-pole basis …" (*See* Affidavit of David L. Wolanin, ¶ 11 and Ex. E.) Can you respond to Mr. Wolanin's assessment?

A. Yes. Regarding the 14 "boxing" examples in Exhibits E to the Allan and Wolanin declarations, my responses fall into several categories:

- Examples No. 1, 6, 8, 12: Wolanin claims these are "complicated" poles and "boxing" would add additional difficulties to future work on the poles, including

"climbing" and/or pole replacement. While it is possible that some poles may not be accessible by bucket truck, it does not necessarily preclude access by other means, such as using a ladder. To the extent that a subsequent pole replacement may be more difficult, the previous discussion regarding the obligation of the attacher to facilitate the operation by temporarily detaching its lines from pole(s), and lowering or diverting them, as necessary, would apply. In any case, for such difficult situations, the immediate make-ready alternatives, possibly requiring a pole replacement, may be similarly problematic, rendering boxing as the most practical solution – consistent with Verizon's "practicable" criteria. (*See* Wolanin Affidavit Exhibit D ¶ 1.)

- Examples No. 2, 3, 4, 10, and 14: Wolanin claims the make-ready is "not overly-complicated," and the apparently little expense of make-ready work (typically $1,450) does not justify the possible additional difficulty of boxing. However, it is not clear on what basis he makes this economic decision; OTELCO would seemingly be in the best position to evaluate the impact of make-ready charges especially factoring in all of the poles in a given project.

- Examples No. 5, 9, 13, and 14: Wolanin considers the additional pull due to a boxed cable to be problematic on these poles. However, the tension due to an additional cable – regardless of which side of the pole it is mounted – will have a similar effect on the tendency to pull the pole over, which condition is restrained by the guying system. The guying system, however, may be checked to confirm it is sufficient for

the additional attachment, and may be strengthened, as necessary. This would be considerably more reasonable and cost-effective than replacing the pole and still having to install an appropriate guying system.

- Example No. 7: Wolanin concedes that the pole in question is already boxed, but that "[u]pon further review," "lowering the current attachment of the cable company and one of Verizon MA's facilities would create enough room for Otelco's attachment … without the need to replace the pole." However, Wolanin does not indicate what the cost would be to OTELCO or how much time it would take to lower the existing facilities, as compared to boxing, which would require no make-ready work.

- Examples No. 11 and 13: Wolanin claims that no make-ready work is required by Verizon, and therefore the pole should not be boxed, However, Wolanin's response ignores the fact that costly make-ready work may be required of other entities with facilities attached to the pole.

Q. In Exhibit. B, Section 3.1 Make-Ready Alternatives, of the Affidavit of David L. Wolanin, it states: "There are several reasons why Verizon will not allow Licensees to attach their facilities below Verizon facilities on a pole", for which the sag characteristics of Verizon's typically heavier copper cables are proposed as a factor. Do you agree with this rationale?

A. No. While there are various reasons for the Verizon to retain the lowest position on the pole, the heavier weight of their cables should not be one of them. A company attaching a lighter weight cable below can add sufficient sag in its line to account for that of the heavier

line above. Nor should weather be a problem. In particular, the related Response of Verizon to the Pole Attachment Complaint, as submitted by Alexander Moore, states:

> "… allowing much lighter third-party attachments below Verizon MA's heavy copper cables on the pole can result in facilities crossing each other at the mid-span between poles, because the heavier copper cables will sag more than the lighter facilities, including in response to *changing weather conditions*." [Italics added]

The incremental increase in sag due to severe (i.e., NESC specified) weather conditions, including ice or high temperature, depending upon the specific details of the installations (span length, messengers, sizes of the cables, …), may be essentially the same, or even less, for an already installed heavy copper cables than that of a smaller, lighter fiber cable. Thus, if a fiber cable installed below the Verizon cable would have (1) sufficient clearance above the surfaces below, under NESC conditions (½ inch radial ice or 120º F), and (2) initially (at installation) meet the minimum 4-inch mid-span clearance to the Verizon cable above, the installation would be NESC-compliant. Furthermore, the mid-span clearances between the cables may actually increase under the severe weather conditions, making "crossover" less, not more, likely to occur.

IV. CONCLUSION

Q. Do you swear that your testimony is true and accurate to the best of your knowledge?

A. Yes.

Q. Does this conclude your pre-filed testimony?

A. Yes.

EXHIBIT A

Outside Plant Consulting Services, Inc.

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ABOUT OUTSIDE PLANT CONSULTING SERVICES, INC. (OPCS)
Dr. Lawrence M. Slavin

Outside Plant Consulting Services, Inc. (OPCS) was established in the year 2002 to help meet the needs of the telecommunications and power industries in establishing standards, guidelines and practices for outside plant facilities and products. The OPCS Group provides related support services for field deployment, and product evaluation and analysis. Dr. Lawrence (Larry) M. Slavin, Principal of OPCS, has extensive experience and expertise in such activities, based upon his many years of service at AT&T/Lucent Bell Telephone Laboratories (Distinguished Member of Technical Staff) in telecommunications product design and development, followed by a career at Telcordia Technologies (Bellcore) in its research and professional service organizations. (See attached Experience and Education.)

As Principal Consultant and Manager/Director of the Network Facilities, Components, and Energy Group at Telcordia, Dr. Slavin was responsible for professional services related to the telecommunications industry. These activities included technical leadership in developing installation practices and "generic requirements" documents, introducing new construction methods, and performing analyses on a wide variety of technologies and products (poles, duct, wire and cable, electronic equipment cabinets, flywheel energy storage systems, turbine-generators, …). Throughout his long career, he has had a leading role in the evolution of many telecommunications related fields and disciplines -- including aerial and buried plant design and reliability; advanced construction and cable and duct placement techniques; copper pair, coaxial, and fiber-optic technology; flywheel energy storage systems; physical design and development of hardware and electronic and electro-optic systems ("SLC 96" digital loop carrier, …); cable media and equipment reliability studies; exploratory fiber-optic hardware development; and systems engineering.

Dr. Slavin has been a member of numerous industry and professional committees and organizations, often in a leadership position (see attached Industry Activities). He is the author of numerous industry technical papers, reports or documents (partial Bibliography attached, with resume), as well as the editor and primary author of ASCE Manual No. 118, *Belowground Pipeline Networks for Utility Cables*, published by the American Society of Civil Engineers. Dr. Slavin is also author of the recently published book ***Overhead Distribution Lines – Design and Applications***, by Wiley–IEEE, and is a contributor to the **Telcordia *Blue Book - Manual of Construction Procedures***.

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Industry Activities (Present and Past**)**

- **National Electrical Safety Code Committee**
  - **Represents the national telephone industry, via Alliance for Telecommunications Industry Solutions, ATIS**
  - **Executive Subcommittee**
  - **Main Committee**
  - **Interpretations Subcommittee**
  - **Subcommittee 4 (Overhead Lines – Clearances)**
  - **Subcommittee 5 (Overhead Lines – Strength & Loading)**
  - **Subcommittee 7 (Underground Lines)**
- **Accredited Standards Committee ASC-O5**
  - ***ANSI O5.1, Wood Poles, Specifications and Dimensions***
  - ***ANSI O5.2, Wood Products, Structural Glued Laminated Timber for Utility Structures***
  - ***ANSI O5.3, Wood Products, Solid Sawn-Wood Products and Braces***
- **ASCE 7 Icing Subcommittee**
- **ASCE Utility As-Built Standards Committee**
- Transportation Research Board
  - Utilities Committee, AFB70
- Pole Reliability Based Design (RBD) Committee, ASCE
  - *Reliability-Based Design of Utility Pole Structures*
- ASCE Journal of Pipeline Systems Engineering and Practice, Associate Editor
- **Committee F17 on Plastic Piping Systems, ASTM**
  - **Subcommittee F17.67 on Trenchless Plastic Pipeline Technology**
  - **Task Group Leader for development of HDD Standard ASTM F1962**
  - ***ASTM F1962, Standard Guide for Use of Maxi-Horizontal Directional Drilling for Placement of Polyethylene Pipe or Conduit Under Obstacles, Including River Crossings***
- Trenchless Installation of Pipelines (TIPS) Committee, ASCE
  - *Manual of Practice No. 118 for Belowground Pipeline Networks for Utility Cables, Chair*
  - *Manual of Practice No. 115 for Pipe Ramming Projects, Vice-Chair*
  - *Manual of Practice No. 112 for Pipe Bursting Projects*
- Plastics Pipe Institute (PPI)
  - Municipal Advisory Board
  - *TR-46, Guidelines for Use of Mini-Horizontal Directional Drilling for Placement of High Density Polyethylene Pipe*
- Center for Underground Infrastructure Research and Education (CUIRE)

  - Industry Advisory Board

- North American Society for Trenchless Technology (NASTT)
  - Charter Member
  - Chair of Directional Drilling Subcommittee
- Trenchless Technology Center, Louisiana Tech University
  - Industry Advisory Board
- Missouri Western State College
  - HDD Steering Committee

Bibliography

Highlights of the next edition of the National Electrical Safety Code, IAEI Magazine, International Association of Electrical Inspectors, May 2022.

Overhead Distribution Lines – Design and Applications, Wiley–IEEE, 2021

NESC clearances are a matter of fact: Designed for worker and public safety, they offer a factual foundation in disputes, IAEI Magazine, International Association of Electrical Inspectors, October 2020

How the NESC® Provides for Multiple Stakeholders on the Utility Pole, Energy Central Magazine, May 2015

Don't Be Up In The Air or Under-Informed (Proposed Changes in the 2017 Edition NESC® Overhead and Belowground Distribution Plant), Outside Plant Magazine, February 2015

Steady Current (Keeping the National Electrical Safety Code Relevant for All Utility Workers), Utility Products, September 2014

Panel Session on 2017 Edition of ASC C2 National Electrical Safety Code (NESC), Co-Chair, IEEE Power & Engineering Society Meeting, July 2014

Which Method to Use When Estimating Maxi-HDD Installation Loads –ASTM F 1962 or the PRCI Method?, ASCE International Pipelines Conference 2014

Repair of In-Service HDPE Water Distribution Pipe, ASCE International Pipelines Conference 2014

Effect of Pipe Stiffness on Maxi-HDD Pull, Journal of Pipeline Systems Engineering and Practice, February 2012

Maxi-HDD Pull Loads for Entry and Exit Points at Different Elevations, International Conference on Pipelines and Trenchless Technology 2011, Beijing

Maxi-HDD Pull Loads for Non-Level Grade for Polyethylene Pipe, Journal of Pipeline Systems Engineering and Practice, May 2011

Guidelines for Use of Mini-Horizontal Directional Drilling for Placement of HDPE Pipe, Trenchless Technology Magazine, January 2011

Parametric Dependency and Trends of HDD Pull Loads, Journal of Pipeline Systems Engineering and Practice, May 2010

Discussion of ASTM F 1962 or "How Are The Pulling Load Formulas Derived and How are they Used?", North American NO-DIG 2010

ASCE Manual of Practice No. 118 for Belowground Pipeline Networks for Utility Cables, Underground Construction Technology Conference, 2010

Pipeline Network Maximizes Sustainability of Buried Cable Infrastructure, ASCE International Pipelines Conference 2009

Buried Duct Network for Upgrading, Maintaining Utility Cables -- Results of Recent Field Trials at the University of Texas-Arlington, Underground Construction Magazine, March 2009

***Belowground Pipeline Networks for Utility Cables, ASCE Manuals and Reports on Engineering Practice No. 118*, 2009**

Joint-Use Buried Duct Network for Upgrading and Maintaining Utility Cables, 2008 Damage Prevention Conference

Buried Pipeline Network for Facilitating Installation of Utility Cables along Roads and Highways, 10th International Conference on Applications of Advanced Technologies in Transportation, 2008

Foresight is More Than 20/20, Preventive OpEx Strategy, Buried Duct Networks, OSP Magazine, May 2008

Utility Asset Management through a Joint-Use Pipeline Network for Cables, ASCE International Pipelines Conference 2008

Joint-Use Buried Pipeline for Utility Cables & "Freight Transportation", 5th International Symposium on Underground Freight Transportation by Capsule Pipelines and Other Tube/ Tunnel Systems, 2008

Joint-Use Buried Duct/Pipeline Network for Facilitating Installation and Maintenance of Utility Cables along Roads and Highways, Transportation Research Board 87th Annual Meeting 2008

Joint-Use Buried Duct Network for Upgrading, Maintaining Utility Cables, Underground Construction Magazine, December 2007

Simplified Method for Estimating Pull Force on Polyethylene Pipe for Mini–HDD Applications, International Conference on Geological Engineering in 2007

Simplified Methodology for Selecting Polyethylene Pipe for Mini (or Midi) – HDD Applications, ASCE International Pipelines Conference 2007

Panel Session: NESC 2007 Panel Session (Strength & Loading), Chair, Towers, Poles & Conductors Meeting, Power Engineering Society, January 2007

Panel Session: Structural Reliability-Based Design of Utility Poles and the National Electrical Safety Code, Chair, 2003 Transmission & Distribution Conference and Exposition, 2003

Panel Session on National Electrical Safety Code (NESC), 2002 Edition, ANSI C2, Chair, 2001 Transmission & Distribution Conference and Exposition

Standard Guide for Use of Maxi-Horizontal Directional Drilling for Placement of Polyethylene Pipe or Conduit Under Obstacles, Including River Crossings, ASTM F1962, 1999

Fiberglass Reinforced Aerial Service Wire, Mechanical Behavior and Installation Guidelines, International Wire and Cable Symposium, 1999

January 1998 Ice Storm Analysis for Bell Atlantic, Utility Pole Symposium, Jacksonville, FL 1999

Fiber-to-the-Home (FTTH) Upgrades in Existing Communities with Buried Plant, Bellcore Report, 1997

Storing Energy, Containing Power, Bellcore Exchange, Spring 1997

Using Trenchless Technology for Installing an Information Superhighway, NO-DIG Engineering, 1996

Making a Smooth Lawn out of a Molehill, Bellcore Exchange, Spring 1996

The Establishment of Coaxial Cable Prototype Test Route at the Environmental Test Facility at Phoenix, AZ, Twelfth Annual National Fiber Optic Engineers Conference, 1996

Using Trenchless Technology for Installing an "Information Superhighway" in Bell Atlantic, North American NO-DIG '95, 1995

Buried Plant – Placement of Coaxial Distribution and Service Cable, Bellcore Practice, 1995

Experiments Pulling Coaxial Cable into Buried Innerduct, and Other Interesting Experiences, Eleventh Annual National Fiber Optic Engineers Conference, 1995

Coaxial Cable Installation Tests in Innerduct, Bellcore Report, 1995

The Application of Trenchless Technology for Fiber-in-the-Loop Upgrades of Telecommunications Facilities, North American NO-DIG '94, 1994

Direct-Buried Innerduct, Local Distribution Plant Engineering and Construction Guidelines, Bellcore Practice, 1994

High Air-Speed Blown-Cable Fiber Installation System, Bellcore Practice, 1994

The Application of Trenchless Technology for Fiber-in-the-Loop Upgrades in Bell Atlantic, Tenth Annual National Fiber Optic Engineers Conference, 1994

The Use of the High Air-Speed Blown-Cable System for Placing Optical-Fiber Cables in Innerduct, Tenth Annual National Fiber Optic Engineers Conference, 1994

Establishment of an Environmental Test Facility for Fiber-Optic Components at Morgan-City-Amelia, LA, Tenth Annual National Fiber Optic Engineers Conference, 1994

The Use of Direct-Buried Semi-Flexible Duct (Innerduct) to Create an Upgradeable Loop Distribution Plant , Bellcore Report, 1994

The Application of Trenchless Technology for Fiber-in-the-Loop Upgrades of Telecommunications Facilities, Bellcore Report, 1994

The Effect of Innerduct Design on the High Air-Speed Blown-Cable Technique, Bellcore Report, 1993

The Use of Direct-Buried Semi-Flexible Duct (Innerduct) for Distribution Applications, Bellcore Report, 1993

Cable Installation Tests in Direct-Buried Innerduct, Bellcore Report, 1992

Removing the Copper Pairs of Telecommunications Cables to Facilitate Fiber-in-the-Loop Upgrades, International NO-DIG '92, 1992

Proposed Generic Requirements and Practices Compatible with High Air-Speed Blown-Cable Installation Systems, Bellcore Report, 1992

Fiber-to-the-Home Evolving in Telephone Local Networks, Underground Focus, Jan./Feb.1992

"Quiet Evolution" Promises All-Fiber Phone Lines, Pipeline & Utilities Construction, Dec.1992

Temperature Cycling Tests on Fiber Drop in Flooded Flexible Duct, Bellcore Report, 1991

The Use of Flexible Duct for Buried Drops, Bellcore Report, 1991

New Cable Installation Methods for FITL Upgrades in Established Areas with Buried Plant, Bellcore Report, 1991

The Use of Small Lawn Plows to Install Buried Drops for FITL Upgrades, Bellcore Report, 1990

Education

Ph.D. - Mechanical Engineering, New York University, 1969

Master of Science - Engineering Mechanics, New York University, 1963

Bachelor of Science - Mechanical Engineering, The Cooper Union, 1961

Awards

- ASCE Outstanding Reviewer, Journal of Pipeline Systems Engineering and Practice, 2013
- Best Paper Award, *Maxi-HDD Pull Loads for Entry and Exit Points at Different Elevations*, International Conference on Pipelines and Trenchless Technology, Beijing 2011 (ICPTT 2011)
- ASCE Outstanding Reviewer, Journal of Pipeline Systems Engineering and Practice, 2010, 2013, 2016
- Certificate of Recognition, Sigma Xi - The Scientific Research Society, The Picatinny Chapter, *Flywheel Energy Storage Systems for the Telephone Outside Plant*, 1996
- 1983 Bell Laboratories Distinguished Technical Staff Award for Sustained Achievement

Experience

Experience 1990 – 2001 (Reverse Chronological Order)

Telcordia: Network Reliability, Operations and Deployment

- Principal Consultant representing the telecommunications industry on various professional organizations and forums. Has been a key member of the **National Electric Safety Code Committee (NESC)**, responsible for specifying safety standards for aerial and buried telecommunications and power facilities in the United States. (Had a leading role in the development of the 2002 edition of the NESC.) Has also been an important member on the ANSI-05 (Wood Poles) standards committee, as well as an active participant in training and certification activities for the directional drilling industry.

Telcordia: Physical Network and Product Integrity and Reliability

- Director of the Network Facilities, Components, and Energy Group. Managed large group (12 engineers) responsible for developing requirements, testing, and analysis of outside plant media, components, and powering for telecommunications applications, including installation guidelines, including ***Blue Book – Manual of Construction Procedures*.**
- Investigation of physical characteristics and related requirements of fiberglass reinforced aerial service wire to prevent problems such as previously experienced during severe winter storm.

Telcordia: Applied Research

- Development and deployment of low-cost utility construction and cable installation techniques to facilitate introduction of the "information superhighway" for the Regional Bell Operating Companies (RBOCs). Instrumental in introducing blown-cable installation technology in United States. Served as chairman of the Directional Drilling subcommittee of the North American Society for Trenchless Technology (NASTT), and was responsible for developing directional drilling standards for the American Society for Testing & Materials (ASTM).
- Investigation of feasibility of electro-mechanical (flywheel) energy storage systems, including containment studies, creation of industry specifications, evaluation of seismic implications, and coordination of industry-wide flywheel safety forum.
- Design and installation of full-scale environmental test facilities across the country for evaluating reliability of fiber-optic and coaxial transmission media and components.

Experience 1961 – 1989 (Reverse Chronological Order)

Bell Laboratories: Loop Transmission Systems

Has had numerous design and/or coordination responsibilities during this decade of rapid growth in metallic- and fiber-optic-based digital loop carrier systems. The following is only a partial list:

- Design and development of customer-premises remote terminal electronic cabinets, including cabinet design, integration of complex digital telecommunications equipment, addressing thermal design issues, and meeting Underwriters Laboratories (UL) and FCC requirements.
- Design and development of "Lightguide Distributing Unit" concept (received original patent).
- Exploring feasibility of optical data links for broadcasting video channels, including the design of the system architecture, overall analysis, and subsequent construction of working electronic/fiber-optic models.
- Planning and installation of metallic and fiber-optic cable and hardware facilities at the Bell Laboratories Lightwave Facility at Chester, NJ -- the showcase of AT&T/Lucent digital and optical networks and hardware systems.
- Physical design of SLC 96 digital loop carrier system
- Ensuring reliability of SLC 96 digital loop carrier systems, including coordination of field tracking and factory studies, and implementation of analytical techniques.

Bell Laboratories: Main Distributing Frame Systems & Hardware

The lack of understanding of this important interface between the central office and outside plant facilities led to numerous, widespread crises in the larger telephone exchanges throughout the country in the 1970s. Has had a leading role in advancing the state-of-the-art and general understanding of MDF systems, including:

- Coordinating design and development of various MDF protector and terminal block hardware.
- Establishing tools and methods for MDF rehabilitation.
- Producing the *MDF Planning and Engineering Guidelines*.

Bell Laboratories: Engineering Analysis & Applied Mechanics

Provided consultation services for numerous projects requiring expertise in engineering mechanics. The investigations included mathematical and computer modeling, as well as laboratory and field experiments, for investigating the following areas:

- Vulnerability of communications cables to nuclear attack.
- Buried waveguide systems, including potential hazards of earthquakes and the design optimization of welded waveguide couplings.
- Dynamic response of missile structures.

Bell Laboratories: Computer Program Systems Studies

- Developed various computer program systems for the AT&T Telstar project and US Navy applications.